IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2007

CORAM

THE HON'BLE MR.JUSTICE R.BALASUBRAMANIAN
&
THE HON'BLE MR.JUSTICE S.K.KRISHNAN

R.T.NO.2 OF 2007 AND

CRL.APP.NOS.433, 438 AND 440 OF 2007

Loganathan ..Appellant in
C.A.433/2007/Accused No.1

S.Kumar @ Raghuman @ Abdul Rahman ..Appellant in
C.A.438/2007/Accused No.3

Sankar @ Sankaranarayanan ..Appellant in
C.A.440/2007/Accused No.2

Vs.

State represented by
The Assistant Commissioner of Police
Salem (South)
Crime No.2835/2005 ..Respondent in
all the appeals/Complainant

Prayer: Criminal appeals against the judgment dated 13.04.2007 passed by the learned Principal Sessions Judge, Salem in S.C.No.200/2006.

For Appellants : Mr.B.Sriramulu, SC for
Mr.R.Rajendran for A1 in CA.433/07

: Mr.V.Gopinath, SC for
Mr.S.Ashok Kumar for A3 in CA.438/07

:Mr.K.S.Dinakaran for
Mr.M.Sathya Narayanan
for A3 in CA.440/07

For Respondent : Mr.N.R.Elango, APP

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COMMON JUDGMENT

(Judgment of the court was delivered by
Justice R.Balasubramanian)

Three persons stand sentenced to death. Therefore, on a Statutory reference, the referred trial is before us. Each of the convicted accused has filed a separate appeal privately and those three appeals are also before us. Since the referred trial and the three appeals arise out of one sessions case, we have taken all the above referred to proceedings for a common disposal. Heard Mr.B.Sriramulu, learned senior counsel appearing for the first accused (A1); Mr.K.S.Dinakaran, learned counsel appearing for the second accused (A2); Mr.V.Gopinath, learned senior counsel appearing for the third accused (A3) and Mr.N.R.Elango, learned Additional Public Prosecutor appearing for the State.

2. The prosecution case is that the accused criminally trespassed into the house of the deceased at about 9.00 p.m on 09.11.2005; A3 murdered Mohan Rao, one of the deceased and A1 and A2 abetted the commission of the crime; in the course of the same transaction, all the three accused fatally attacked Prabhu (son of Mohan Rao) and Sheela (wife of Mohan Rao and mother of Prabhu) and decamped with a cash of Rs.22,000/-; jewellery weighing 163.25 sovereigns and silverware weighing 33-1/2 kgs; in the course of the same transaction, they removed the jewels from the person of Sheela and therefore triable under sections 449 read with 34 I.P.C (A1 to A3); 302 I.P.C (A3); 302 read with 114 I.P.C (A1 and A2); 302 read with 34 I.P.C (2 counts) (A1 to A3); 392 read with 397 I.P.C (A1 to A3) and 404 I.P.C (A1 to A3). To prove their case, the prosecution examined P.Ws.1 to 21, besides marking Exs.P.1 to P.40 and M.Os.1 to 76. The defence on their side examined four witnesses as D.Ws.1 to 4 and marked Exs.D.1 to D.16. Admittedly, there are no eye witnesses to the crime. The persons killed in this case are husband, wife and their son. P.W.2 is working as the servant-maid in the house of the deceased since two years prior to the occurrence. Everyday she used to report for duty in their house at 8.30 a.m; complete her work at 10.30 or 11.00 a.m; report for duty again in the evening at about 4.00 p.m and go back to her house between 5.00 and 5.30 p.m. At 8.30 a.m on 10.11.2005, as usual she reported for duty in the house of the deceased. She pressed the calling bell twice but there was no response. Therefore thinking that she can tap the door, she went towards the door and when she put her hand on the door, it opened on it's own. Normally, the door would remain bolted from inside and it would always be opened by removing the bolt from inside. P.W.2 entered the house and noticed that the television was not switched off at

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all. In the hall, she found Prabhu lying dead with his throat slit. In the adjoining bed room on the left side, Mohan Rao was also found lying dead in a pool of blood. The clothes available in the cup-board were found on him. P.W.2 entered the kitchen, where she found Sheela also lying dead. She noticed that the Mangalsutra and the bangles (M.Os.2 and 1), which will always be on the person of Sheela, were missing. Then P.W.2 rushed to the house of P.W.1, who is the elder brother of Mohan Rao and informed him. P.W.1 went to Mohan Rao's house with P.W.2 and observed the same. Then P.W.1 left to the police station to give a complaint. P.W.2 was examined by the police in the house itself. P.W.2 came to know that the accused were arrested on 15.11.2005 and they were in the police station. Out of anxiety, she also went to the police station, where, she identified M.Os.1 and 2, which were found blood stained.

3. P.W.1 is the elder brother of Mohan Rao. At 9.00 a.m on 10.11.2005, P.W.2 came to his house and informed him about the crime and after making preliminary enquiries with her, P.W.1 rushed to his brother's house along with P.W.2, where, he found his brother, brother's wife and nephew lying dead in different places of the house. He also observed that on the dead body of Mohan Rao, the clothes from the cup board were found strewn. He also noticed that Mangalsutra and bangles, which Sheela used to wear normally, were not on her person. He observed the whole house in a disarrray with various articles spread hither and thither. He found the cup-boards open. Immediately P.W.1 went to the police station, where, he lodged the complaint, which is Ex.P.1. P.W.1 was examined in his brother's house itself by the police. At 6.00 p.m on 15.11.2005, he came to know that the accused have been arrested and therefore he went to the police station, where, he saw A1 and A2. He identified M.Os.1 and 2 in the police station. He also identified M.Os.3 to 7 as the jewels of his sister-in-law (Sheela). Sheela used to wear M.Os.3 to 7 on her person on any festival day or even when she used to visit the house of P.W.1 and therefore he knew the above referred to jewels as that of Sheela. P.W.3 is a driver by profession, who had been working as such with Mohan Rao for about eight years prior to the crime. Mohan Rao is doing business in selling silver anklets. Mohan Rao had his business activities in Cuddapah (State of Andhra Pradesh) and Mehaboob Nagar in Hyderabad. Whenever Mohan Rao used to go outside the State for his business purposes, P.W.3 used to accompany him. On some occasions when Mohan Rao carries a huge quantity of goods for sale, another person by name Mani also used to accompany him. On 06.11.2005, in the car driven by P.W.3, Mohan Rao, Sheela and Prabhu went to Tirupathi where, they stayed for about two days. At Tirupathi, Mohan Rao and Prabhu tonsured their heads and they returned to Salem at 9.30 p.m on 08.11.2005. On 09.11.2005, Mohan Rao left his house to attend to his usual business and returned

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home at 12.00 noon. Mohan Rao informed P.W.3 at that time that he is expecting silver anklets weighing 32 kgs given to P.W.13 for polishing any time in the evening; with that he (Mohan Rao) had to go to Hyderabad and therefore asked P.W.3 to telephone to him in the evening. Accordingly at 6.00 p.m on that evening, P.W.3 telephoned to Mohan Rao, who stated that he had already got the silver anklets referred to earlier and that he (Mohan Rao) is likely to leave for Hyderabad on the next day morning. Normally, at 10.00 a.m everyday, P.W.3 used to report for duty in Mohan Rao's house and accordingly at 10.00 a.m on 10.11.2005, he reported for duty, where he found a huge crowd and police. On verification, he came to know that Mohan Rao, his wife and son had been murdered. P.W.3 entered the house to find the horror. He also noticed that M.Os.1 and 2, which Sheela normally used to wear everyday on her person, were missing. Coming to know that the accused have been arrested on 15.11.2005, he went to the police station, where, he found A1 and A2 as well as M.Os.1 and 2 (blood stained). He also found silver anklets in twelve packets weighing 32.170 kgs kept in a zip bag. M.O.8 series are the silver anklets, which he saw in the police station. He also identified M.Os.3 to 7 in the police station, which Sheela used to wear on her person on any festival day. P.W.3 was examined by the police on 15.11.2005.

4. P.W.20 is the Sub-Inspector of Police before whom, at 10.00 a.m on 10.11.2005, P.W.1 appeared and gave a written complaint, which he registered as Ex.P.1 in his police station Crime No.2835/2005 under sections 302 and 392 I.P.C. Ex.P.36 is the printed first information report. He sent the express records to the court as well as to the higher officials. He sent a copy of the express records to the Assistant Commissioner of Police also. He was examined by the Assistant Commissioner of Police. P.W.21 is the Assistant Commissioner of Police (Investigating Officer). At about 10.05 a.m on 10.11.2005, he received information over telephone about this crime from P.W.20. Accordingly he reached the crime scene where, he collected the copies of the express records. Then he commenced the investigation pursuant to the orders of his higher ups. At 10.45 a.m on that morning, in the presence of P.W.14 and another, he prepared Ex.P.10, the observation mahazar and Ex.P.37, the rough sketch. He requisitioned the services of the finger print experts to the crime scene as well as the dog squad. Then he caused the crime scene and the dead bodies to be photographed. P.W.18 is the police Photographer, who photographed the dead bodies and the crime scene from different angles. Exs.P.27 and P.28 series are the photographs and negatives. At 12.30 p.m on that morning, he conducted inquest over the dead body of Prabhu in the presence of witnesses and prepared Ex.P.38, the inquest report. Between 2.00 p.m and 3.00 p.m on 10.11.2005, P.W.21 conducted inquest over the dead body of Mohan Rao in the presence of panchayatdars and witnesses. Ex.P.39 is the inquest

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report. Between 3.00 p.m and 4.00 p.m on that day, he conducted inquest over the dead body of Sheela in the presence of panchayatdars and witnesses and prepared Ex.P.40, the inquest report. At 4.15 p.m on that evening, P.W.21 recovered M.O.24 (blood stained plastic mat) found close to the dead body of Prabhu; blood stained mosaic tile (M.O.28) and sample mosaic tile (M.O.29) under Ex.P.11 (recovery mahazar). Under Ex.P.11, M.Os.25 and 26 also came to be recovered while under Ex.P.12, M.O.27 came to be recovered. M.O.27 is the blood stained blue colour bed cover found close to the dead body of Mohan Rao. At 5.30 p.m on that evening, he recovered from the crime scene M.O.30 (blood stained nighty - a woman's wear) and a blood stained knife (M.O.1) found on top of it under Ex.P.13 attested by witnesses. Under Ex.P.14 (recovery mahazar), P.W.21 recovered M.O.32 (blood stained mosaic tile); M.O.33 (sample mosaic tile); M.O.34 (blood stained twin coloured button namely, grey colour and black colour and M.O.35, another twin coloured button, from beneath the dead body of Sheela. Then P.W.21 sent each of the dead bodies through a separate police constable to the hospital with separate requisition for post mortem.

5. P.W.9 is the police constable, who accompanied the dead body of Sheela along with Ex.P.5/requisition to the hospital for post mortem. After post mortem, he removed M.Os.10 to 13 from the dead body and handed over the same to the Investigating Officer. Then he gave the dead body to the relatives. P.W.10 is another constable, who accompanied the dead body of Mohan Rao along with Ex.P.7/requisition to the hospital. After post mortem, he removed M.Os.14 to 17 from the dead body and handed over the same to the Investigating Officer and the dead body to the relatives. P.W.11 is the last of the three constables, who accompanied the dead body of Prabhu along with Ex.P.3 (requisition) to the hospital. After post mortem, he removed M.Os.18 to 20 from the dead body and handed over the same to the Investigating Officer. P.W.6 is the Doctor, who conducted post mortem on the dead body of Prabhu on receipt of the requisition (Ex.P.3) at about 4.40 p.m on 10.11.2005. During post mortem, he found various symptoms as noted by him in Ex.P.4, the post mortem report.

Injuries:

1) Oblique cut injury on left side neck to mandible 8 cm x 5 cm x 4 cm bone deep with cut fracture left side of mandible. All the major vessels and nerves and neck muscles severed.
2) Oblique cut injury present and extends from left side of neck to front of neck 19 cm x 7 cm x 7 cm.
3) Cut injury of trachea and thyroid cartilage.
4) Cut fracture of C vertebra.

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5)Oblique cut injury right side of mandible 7 x 3 x bone deep.
6)Cut fracture right side of mandible.
7)Multiple stab injuries right side of neck.
4 cm x 1.5 cm x 5 cm
3 cm x 1 x 5 cm
2 x 1 x 4 cm
2 x 1 x 5 cm
8)Oblique cut injury present over back of the neck 8 cm x 3 x bone deep.
9)Another cut injury present 9 cm x 2 x 6 cms on the back of the neck.
10)Oblique cut injury present on right side of the neck 5 cm x 2 x 5.
11)Cut fracture and dislocation of right wrist joint.
12)Multiple cut injury on right hand (palmar aspect) 10 cm x 3 cm x bone eep, 3 cm x 2 cm x tendons, muscles severed, 3 cm x 2 cm x 1.5 cm.
13)Cut fracture of right middle finger, ring finger, index finger at the meta carpo phalangeal joint level.
14)Oblique cut injury right forearm 6 cm x 3 cm x bone deep.

All the above injuries are antemortem and having sharp margins and gaping in nature.

Heart: Normal, cavities empty, coronary vessels - patent. Great vessels - Normal. Lungs, Liver, Spleen, Brain, Kidneys - On c/s. - Pale. Stomach: Contained 150 gms undigested cooked rice and no specific smell. Mucosa - Pale. Small intestine: Yellowish chyme. No specific smell. Bladder: Empty. Both pelvis intact."

Doctor opined that death would have occurred 20 hours prior to post mortem as a result of shock and haemorrhage due to multiple stab and cut injuries. Injuries 1 to 6 and 8 to 14 found on the dead body are grievous injuries and they could have been caused by the use of aruval while injury No.7 could have been caused by the use of a knife. Death would have been instantaneous. P.W.7 is the other Doctor, who did post mortem, on receipt of Ex.P.5, on the dead body of Sheela on 10.11.2005. During post mortem, she found various symptoms as noted by her in Ex.P.6 (post mortem report).

"Injuries:

1)Abrasions (a) superficial abrasion left forearm 2 in numbers each of 3 cms radius. (b)Left palm 0.5 x

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0.25 cms 2 in Nos. (c) Linear abrasion left forearm 14 cms in length at lift scapular region 2 x 1 cms.

2) Oblique cut injury present over front of neck to upper middle chest 14 x 8 x 5 cms with 3 cut injury over the trachea. Both side carotid vessels, nerves and muscles of neck found cut.
3) Oblique cut injury present over the chin 9 x 1 x 3 cms with cut fracture of mandible.
4) Oblique cut injury present over left thumb 1 x 0.5 cms bone deep.
5) Stab injury present over left side chest wall 3 x 2 x 2 cms.
6) Stab injury present over right upper abdomen 1 cm below right costal margin 2 x 1 x 1 cm.
7) Stab injury present over lower part of left arm 9 x 2 cms bone deep.
8) Comminuted fracture of left clavicle.

(All the above injuries are having sharp margins and are gaping in nature). Antemortem.

Heart: Chambers and valves normal. Cavities empty. Coronary vessels: Patent. Great vessels: Normal. Lungs - Both on C/s. Pale. Hyoid bone was found intact. Stomach: 200 gms of undigested cooked rice food. No specific smell. Mucosa - Pale. Small intestine: Yellowish chyme. No specific smell. Mucosa - Pale. Liver, Spleen and Kidneys: All are c/s - Pale. Bladder: Empty. Uterus: Normal in size. Cavity empty. Genetalia: Normal. Hymen: No injuries. Pelvis, Membrane and Spinal column - all are intact. Brain: C/s. Pale".

Doctor opined that death would have occurred 20 hours prior to autopsy as a result of shock and haemorrhage due to multiple cut and stab injuries. The death is instantaneous. Injuries 2, 3 and 4 are cut injuries while injury Nos.5 to 7 are stab injuries. P.W.8 is the last of the three Doctors, who conducted autopsy, on receipt of Ex.P.7, on the dead body of Mohan Rao at about 4.55 p.m on 10.11.2005. During post mortem, she found various symptoms as noted by her in Ex.P.8, the post mortem report.

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"Injuries:

1) Oblique multiple cut injury present over right palmar aspect 9 x 3 x 2 cms, 10 x 2 x 2 cms, 3 x 2 x 2 cms bone deep, 2 x 2 x 2 cms bone deep with cut fracture of right thumb finger, index finger and

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middle finger each 2 x 1 cms with almost separated except for a tag of skin cut fracture of phalanges, meta carpel, carpal bones present. Fracture and dislocation of right wrist joint.

2) Multiple superficial cut injury on right deltoid 10 x 0.5 cms and 8 x 0.5 cms, 7 x 0.5 cms, 8 x 0.5 cms with surrounding contusion 7 x 7 cms dark red.
3) Oblique incised cut injuries present over (a) right side neck 10 x 2 x 4 cms. (b) left side neck 8 x 2 x 6 cms. All the structure blood vessels, nerves, muscle are cut.
4) Oblique cut injury on left scapular region to left side neck 13 x 8 x 6 cms bone deep with cut fracture of left scapular bone and 8 x 3 cms cavity deep.
5) Incised cut injury on occipital region of scalp 16 x 1 x 1 cms bone deep.
6) Oblique cut injury on left mastoid process to back of neck 16 x 3 cms bone deep and incised cut injury on 16 x 1 cms bone deep.
7) Oblique cut injury on left side neck to right mastoid 18 x 6 cms cavity deep with cut fracture of C vertebrae on spinal cord.
8) Stab injury on left shoulder, 4 x 1 x 5 cm, 1 x 1 x 1 cm and 2 x 1 cm cavity deep.
9) Oblique cut injury on root of nose 1 x 0.5 x 1 cms.
10) Abrasion - Left shoulder 2 x 1 cm.

All the above injuries are having sharp margin, gaping in nature (Antemortem). Heart: Chambers and valves - Normal. Cavities: Empty. Coronary Vessels: Patent. Great Vessels: Normal. Lungs: Both on C/s.Pale. Hyoid bone: Intact. Stomach: 300 gms of partly undigested cooked rice food. No specific smell. Mucosa: Pale. Small Intestine: Yellowish chyme. No specific smell. Mucosa: Pale. Liver, Spleen and Kidneys: All are C/s. Pale. Bladder: Empty. Pelvis, membranes - Both intact. Brain: C/s. Pale."

Doctor opined that death would have occurred 20 hours prior to autopsy as a result of shock and haemorrhage due to multiple cut and stab injuries. The death would have been instantaneous. Injuries 1 to 7 are cut injuries.

6. P.W.21 was continuing his investigation by examining witnesses and at 8.30 p.m on 10.11.2005, he recovered the articles removed from the dead body of all the three deceased and handed over to him by P.Ws.9, 10 and 11 under Form 95. During inquests done by P.W.21, he examined P.Ws.1, 2, 3 and others by recording

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their statements. His primary investigation revealed that business people dealing in silverware and living in Shevapet would always keep their residential houses bolted from inside and they will not allow any strangers to come inside the house. His investigation also revealed that the suspects have entered the house through the front door without making any hole in any part of the wall in the house. Therefore he prima facie concluded that the suspects could have gained entry into the house using their acquaintance with the family of the deceased. Pursuant to the orders of the higher ups, P.W.21 constituted eight separate police teams to secure the accused. He enquired the police informants, which made him to make local enquiries in Salem Town, Kichipalayam, Guhai and Shevapet. On 11.11.2005, he examined persons living in close proximity to the house of the deceased by recording their statements. Further witnesses were examined on 12.11.2005. There is already an undetected crime on the file of CBCID police in B9 Police Station regarding the triple murder in the house of one Dr.Srinivasan. Therefore P.W.21 discussed the case, which he is investigating, with the police officers concerned in the other crime. On 13.11.2005, P.W.21 examined further witnesses by recording their statements. He advised the special team constituted by him to be in touch with the police informants to get any clue. On 14.11.2005, P.W.21 examined further witnesses by recording their statements.

7. In the early hours of 15.11.2005, P.W.21 was in the course of his investigation to apprehend the accused. At about 6.00 a.m on that morning, an informant gave an information to P.W.21, on the basis of which, P.W.21 contacted P.W.15 (Village Administrative Officer) over telephone and asked him to meet him (P.W.21) in the Railway Station at Sooramangalam. P.W.15 accordingly appeared before P.W.21 along with his colleague by name Rathinavelu near the compound of the railway station. P.W.21, P.W.15 and others were standing near the railway station compound. To them, P.W.21 informed that he (P.W.21), had received information that a suspect had reached the railway station and therefore P.W.15 should stand as a witness for arrest if any to be made. Police informant identified A1, who was standing near the railway ticket issuing counter, to P.W.21 from a distance. Immediately P.W.21 arrested A1 and examined him in the presence of P.W.15 and another. It was 8.30 a.m. A1 voluntarily gave a confession statement, the admissible portion of which is Ex.P.15. The arrested accused was having M.O.39 (yellow colour bag) and from that he produced M.O.36 (gold chain); M.O.37 (two fancy jewels); Ex.P.16 (railway journey ticket from Salem to Chennai) and a sum of Rs.9,580/- (M.O.38), which were all recovered under Ex.P.17. A1 further disclosed that if the police party and the witnesses accompany him to the house, he will give his share of the stolen articles; hand over the blood stained clothes, which he was wearing at the time of commission of

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the crime and the weapon. Accordingly, the arrested accused took the police party and the witnesses to his house around 11.00 a.m., from where, he produced M.Os.3, 2, 41, 42, 45, 40 series, 4, 43, 44 series, 45, 46, 47, 48, 49, 50, 5, 51, 6, 7 series, 52, 2, 53, 54 series, 8 series and his motor cycle (M.O.9). All the above referred to articles came to be recovered under Ex.P.18 attested by P.W.15 and another. Then the arrested accused took the police party and the witnesses to Thirumanimuthar River Bank and from behind the bush there, he produced M.O.55 (blood stained knife), M.O.56 (blood stained white colour dhoti) and M.O.57 (blood stained white colour half slack), which came to be recovered under Ex.P.19 attested by the same witnesses. Then the arrested accused took the police party and the witnesses to a place called Pon Nagar in Zahir Ammapalayam, where he identified A2.

8. P.W.21 arrested A2 at about 1.45 p.m on that day in the presence of P.W.15 and another and examined him. The arrested second accused also gave a voluntary confession statement at that time, the admissible portion of which is Ex.P.20. The arrested second accused took the police party and the witnesses to his house, from where, he produced M.O.1 (blood stained), M.O.22 series, M.O.58, M.O.59, M.O.60, M.O.61 series, M.O.62 series, M.O.63 series, M.O.65 (blood stained), M.O.66 (blood stained) and a cash of Rs.3,230/- (M.O.67), which were recovered under Ex.P.21. Both the arrested accused and the case properties were brought to the police station. The recovered jewels were weighed and valued with the help of a jewel appraiser. P.Ws.1, 2, 3, 13 and others were shown the recovered jewels for identification. They were examined by recording their statements. On 16.11.2005, P.W.21 sent the arrested accused for judicial remand and the case properties to the court under Form 95. P.W.21 examined further witnesses by recording their statements. He requested P.W.12 (Canara Bank Manager at Guhai) to give the statement of account of A1 in his bank. Likewise, P.W.21 had also requested P.W.5, the Sub-Registrar of Assurances, Sooramangalam and the Manager of Lord Krishna Bank to give the transactions which A1 had with them. Further witnesses were examined by P.W.21 on 17.11.2005. P.W.21 gave a request to the court to send the finger impressions already lifted from the accused to the expert to be compared with the chance prints available and lifted from the crime scene. By examining P.W.5 on 18.11.2005, P.W.21 recovered Ex.P.2, certified copy of a document. On 19.11.2005, P.W.21 examined P.W.20 by recording his statement. P.W.21 received the authenticated copy of the statement furnished to him on 21.11.2005 by the Manager of Lord Krishna Bank. P.W.21 advised his special team to secure the absconding accused by being in close touch with the police informants. On receipt of information from the police informant, P.W.21 sent information at about 1.30 p.m on 27.11.2005 to P.W.15 and another to come near the Darga at Sanyasikundu, which place P.W.21 also reached. There

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P.W.21 arrested A3 in the presence of P.W.15 and another at about 2.30 p.m and examined him. At that time A3 gave a voluntary confession statement, the admissible portion of which is Ex.P.23. A3 produced a sum of Rs.960/- from his person at about 4.00 p.m (M.O.68), which was recovered under Ex.P.23 (recovery mahazar) attested by the same witnesses. Then A3 took the police party and the witnesses to his house at Muniappan Koil Street at Kadambur, from where, he produced M.Os.69, 70, 71, 72, 21 series, 73 (blood stained aruval), 74 (blood stained coloured lungi), M.O.75 (blood stained half-sleeves shirt) and M.O.76 (yellow bag), which were recovered under Ex.P.24 (recovery mahazar) attested by P.W.15 and another. P.W.21 returned to the police station at about 7.00 p.m on that day along with A3 and the recovered objects. By summoning a jewel appraiser, the jewels were weighed and valued. A3 was sent for judicial remand on 28.11.2005. He summoned the jewel appraiser from the Canara Bank and others to the police station to identify the jewels recovered at the instance of A3 and he examined them by recording their statements. The objects recovered from A3 were sent to the court in Form 95 and on 29.11.2005, P.W.21 gave a request to the court to send the case properties for chemical examination.

9. P.W.4 is a resident of Arunachalam Street in the ghee market at Guhai. He is working as a jewel appraiser in the Indian Bank for about eight years. P.W.4 knows Arumugam having a jewel shop in Trichy Main Road at Guhai. Arumugam carries on business in the name of Sumangali Jewellers. P.W.4 has been his good friend for about 25 years. Sheela (D2) - wife of Mohan Rao (D1) used to visit Arumugam's jewellery shop often to buy jewels and on those occasions, P.W.4 had seen her. About six months prior to the occurrence, Arumugam telephoned to P.W.4 stating that he should accompany Arumugam to the police station at Shevapet on an enquiry to be held in a complaint lodged by him (Arumugam). Therefore P.W.4 accompanied Arumugam to the police station. In the police station, P.W.4 saw Mohan Rao (D1), Sheela (D2), A1 and others. The Inspector of Police advised P.W.4 to stay out and he examined the persons inside the police station. One hour later, Mohan Rao (D1), Sheela (D2) and Arumugam came out of the police station. When P.W.4 enquired them, he was informed by them that the police advised that one should not interfere in the affairs of the other and to that effect, they have taken a statement in writing. At that time, A1 spoke to P.W.4. At about 8.00 or 8.30 p.m on 09.11.2005, P.W.4 was on his way via Moongapadi Street to the shop of Arumugam (Sumangali Jewellers). P.W.4 would always take Moongapadi Road to reach the shop of Arumugam. As he was so going on that day, about four houses ahead of the house of Sheela (D2), he noticed all the three accused parking motor cycles and then entering Sheela's (D2) house. All the three accused present in court had entered Sheela's house. It was around 8.45 p.m or so.

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P.W.4 had seen A2 and A3 when they used to visit A1's shop. P.W.4, on reaching Arumugam's shop, told him that he had seen all the three accused entering the house of Sheela. Arumugam told P.W.4 that they are known to each other already. On 10.11.2005, P.W.4 went to the temple in the morning and when he was on his way back via Moongapadi Road, there was a wide talk that three persons have been murdered. When he reached that place, he found a posse of policemen and public assembled there. After seeing that crowd, P.W.4 proceeded on his way to attend to his work in the bank where he is working. On 11.11.2005, police examined him in the bank and at that time P.W.4 told what he saw. P.W.4 identified M.O.9 as the motor cycle used by the accused on the occurrence day.

10. P.W.5 is the Sub-Registrar of Assurances having his office at Sooramangalam. He would depose that a lady by name Sheela sold a property belonging to her on 27.10.2005 to one S.Sahabudeen. Ex.P.2 is the certified copy of the sale deed. One Loganathan, son of Ganapathy and T.Prakash, son of Thiagarajan, have attested the document as witnesses. P.W.12 during the relevant time was working as the Branch Manager of Canara Bank at Guhai. On 01.08.2005, Mohan Rao, a resident of Moongapadi Street, opened a Savings Bank Account in his bank. On 09.08.2005, Sheela (wife of Mohan Rao) opened a Savings Bank Account in that bank. Mohan Rao pledged jewels owned by him on 01.08.2005 with the bank and raised a loan of Rs.50,000/-, which P.W.12 disbursed. On 22.08.2005, Mohan Rao again pledged two jewels in the bank and obtained a loan of Rs.35,000/-. On 09.08.2005, Sheela (wife of Mohan Rao) pledged a jewel and raised a loan of Rs.95,000/-. On 27.10.2005, Mohan Rao and his wife redeemed the jewels by paying the principal and interest due. As requested by P.W.21, P.W.12 gave Ex.P.9 with enclosures evidencing the above transaction with the bank. On 30.11.2005, P.W.12 was summoned to the Investigating Police Station, where, he identified the jewels pledged by Mohan Rao and Sheela in his bank. He identified M.O.21 series, M.O.1 series, M.O.5, M.O.22 and M.O.23 as jewels pledged by Mohan Rao (D1) and M.O.3 as the jewel pledged by Sheela (D2). P.W.13 is residing at Guhai. He has his shop near Ambalavanar Kovil at Guhai. He carries on business of polishing silverwares and silver jewels. Two or three years prior to the occurrence, Mohan Rao, a resident of Moongapadi, had given him work to polish silver anklets. Therefore P.W.13 knows Mohan Rao very well. On 05.11.2005, Mohan Rao and his driver (P.W.3) came to his shop and handed over silver anklets weighing 32 kgs for polishing. P.W.13 completed that work and returned the silver anklets referred to above neatly packed in twelve plastic bags to Mohan rao at about 4.30 p.m on 09.11.2005. Next day he came to know that the entire family members of Mohan Rao were killed and there was a robbery. Five days thereafter i.e., on 15.11.2005, he came to know that the suspects were arrested and the stolen articles were recovered. He went to the

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Investigating Police Station on 15.11.2005 and identified M.O.8 series (silver anklets) in the police station. There were twelve packets. P.W.14 is having an electrical shop in Moongapadi Street. His shop is at No.39, Moongapadi Street while his residence is at No.38 of the same street. Mohan Rao (D1) was a tenant under him in his house on a monthly rent of Rs.4,000/-. Mohan Rao was selling silver articles. In that house, besides Mohan Rao, his wife Sheela and their son Prabhu were residing. Mohan Rao often used to go outside the town for business purposes. Sheela used to come to P.W.14's house to have a chat with his wife. At 9.45 a.m on 10.11.2005, P.W.14 came out of his house to go to his shop and at that time he noticed P.W.1 and others just outside the house of Mohan Rao. Police also came. P.W.14 went inside the house along with those people where, he noticed the television switched on. He observed the dead body of Mohan Rao and witnessed the preparation of Ex.P.10, the observation mahazar. He also witnessed the recovery of M.Os.24 to 26 under Ex.P.11; M.Os.27 to 29 under Ex.P.12; M.Os.30 and 31 under Ex.P.13 and M.Os.32 to 35 under Ex.P.14 as already spoken to by P.W.21. P.W.16 is the Assistant Regional Transport Officer in the Regional Transport Office at Salem. He verified the "B" Register available in his office, which disclosed that as on 30.05.2002 the vehicle bearing Regn.No.TN-30-B-8583 stands registered in the name of Loganathan, son of Ganapathy, No.158, T.Cheri Road, Salem (A1 is shown to be that person as per the charge sheet). P.W.16 gave the certified copies of the records in regard thereto to the Investigating Officer, which is Ex.P.25. M.O.9 is the vehicle which corresponds to the entry in the "B" register.

11. P.W.15 is the Village Administrative Officer. At 6.00 a.m on 15.11.2005 when he was in his house, P.W.21 contacted him over telephone and asked him to go over to the railway station. Immediately P.W.15 contacted the Thasildar over telephone who asked him to come to his office. Accordingly P.W.15 reached the Thasildar's office at 7.00 a.m. Another Village Administrative Officer by name Rathinavelu was also already there and he appears to have come there on instruction from P.W.21. From there P.W.15 and the other went to the railway station where, P.W.21 was standing with his police personnel. It was 8.00 a.m. A1 was standing opposite to the ticket issuing counter and he was arrested. A1 gave a voluntary confession statement at that time, the admissible portion of which is Ex.P.15. M.Os.36 to 38 and Ex.P.16 were produced by the accused at that time from his person. M.O.39 is the yellow colour bag which the accused had on his person. All the above referred to articles were recovered under Ex.P.17 as already spoken to by P.W.21. Pursuant to Ex.P.15, the arrested accused took the police party and the witnesses to his house, from where, he produced M.Os.3, 40, 4, 41, 42, 43 series, 44, 45, 46, 47, 48 series, 49 series, 50, 5, 51, 6, 7 series, 52,

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2, 53, 54 and 8 series concealed in a zip bag weighing about 32.170 kgs. He also produced M.O.9, the motor cycle. All the above referred to articles were recovered under Ex.P.18 as spoken to by P.W.21. Then the arrested accused took the police party and the witnesses to the river bed and from nearby bush, he produced M.Os.55 to 57, which were recovered under Ex.P.19 as spoken to by P.W.21. Then the first accused took the police party and the witnesses to the house of A2 in Pon Nagar at Zahir Ammapalayam, where, he identified him. P.W.21 arrested A2, who, at that time gave a voluntary confession statement, the admissible portion of which is Ex.P.20. Pursuant to Ex.P.20, M.Os.8, 1, 22, 59, 60, 61 series, 62 series, 63 series, 64, 65, 66 and 67 came to be recovered under Ex.P.21. When P.W.15 was in his office on 27.11.2005, P.W.21 contacted him over telephone and asked him to be a witness to in investigation to be done by him. Accordingly P.W.15, taking permission from the Thasildar, proceeded to the place where he was asked to come. Another Village Administrative Officer by name Subramaniam was already there. A3 was standing at that time outside the Darga. He was arrested and examined. A3 also gave a voluntary confession statement, the admissible portion of which is Ex.P.22. At the time of arrest itself A3 produced a sum of Rs.960/- from his person (M.O.68) and it was recovered under Ex.P.23 (recovery mahazar) attested by P.W.15 and another. Then the arrested third accused took the police party and the witnesses to a place known to him, from where, he produced M.Os.69, 70, 71, 72, 21 series, 73, 74, 75 and 76 and all those material objects came to be recovered under Ex.P.24 attested by this witness and another. P.W.15's evidence shows that he witnessed all the recoveries referred to above under the various mahazars, which he and another witness attested. P.W.17 is the Inspector of Police (finger prints), Salem Division. On 10.11.2005, on receipt of the requisition from the Investigating Police Station in this case, he proceeded to the crime scene, which he observed. He examined the crime scene with reference to the availability of chance prints. His examination resulted in chance prints on the door and almirah. There were four chance prints on the almirah and three chance prints in the door. The chance prints in the almirah lifted by him were assigned with marks C1, C2, C3 and C4. The chance prints lifted by him from the door were assigned marks C5, C6 and C7. Since the chance prints lifted from the door namely, C5, C6 and C7, were not clear, P.W.17 could not compare them with the suspects' prints available and therefore he eliminated them from consideration. He compared C1, C2, C3 and C4 (chance prints) with the finger prints of all the three deceased as well as the finger prints of fifteen suspects. C1 to C4 (chance prints) did not tally with the finger prints of the persons referred to above. On 09.12.2005, P.W.17 examined the finger print of Loganathan (A1) with chance prints C1, C2, C3 and C4 and found chance prints A1 to C4 tallying with the impressions of Loganathan's left hand thumb,

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right hand thumb, right hand index finger and right hand middle finger. Accordingly P.W.17 sent his report in regard thereto to the court. Chance prints C1 to C4 did not tally with the finger impressions of A2 and A3. He sent his report to P.W.21. Ex.P.26 is his report, which includes the reasoning sheet and the photographs of the prints. P.W.19 is the Magisterial Clerk, who speaks about the receipt of the case properties along with Ex.P.29 (requisition) given by the Inspector of Police; sending the case properties as an enclosure to court's letter (Ex.P.30) to the laboratory; receipt of Ex.P.31 (chemical examiner's report); Ex.P.32 (serologist's report); Ex.P.33 (viscera report for Mohan Rao); Ex.P.34 (viscera report for Sheela) and Ex.P.35 (viscera report for Prabhu). P.W.21 in the mean time was continuing his investigation by examining witnesses and recording their statements. On 09.12.2005 he examined P.Ws.6, 7 and 8 by recording their statements. On 13.01.2006, P.W.21 examined P.W.16 by recording his statement. On 28.01.2006, P.W.21 examined P.W.17 by recording his statement. Then, after completing all the legal formalities, P.W.21 filed the final report in court against the accused on 10.02.2006 under sections 449 read with section 34 I.P.C; 392 read with section 397 I.P.C; 404 I.P.C and 302 read with section 34 I.P.C.

12. When the accused were questioned under section 313 of the Code of Criminal Procedure on the basis of the incriminating materials made available against each one of them, they denied each and every circumstance put up against them as false and contrary to facts. A1, at the end of his questioning, filed a written statement, which we summarise hereunder:

> "List Witness No.7 namely, Arumugam had illicit affair with Sheela over a long time; they had some difference of opinion on money matters as well; Arumugam gave a complaint against Sheela in the Police Station at Shevapet (Investigating Police Station is also Shevapet); Sri.Chellappa, Inspector of Police at that time enquired the parties concerned and sent them away advising that thereafter each should not have any contact with the other; I appeared in the police station at that time in support of Sheela and I was also present when Chellappa was examining the parties; Inspector of Police (Chellappa) did not direct anybody at that time to go out of the police station and therefore P.W.4 is speaking falsehood; since few months prior to Sheela's death, I had developed friendship with Sheela and as per her request, I was also assisting her; my relationship with Sheela was not liked to by Arumugam, a disgruntled person; day-by-day Arumugam was increasing his hatred towards me; I do not know A2 and A3 at all and I never

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had any contact with them; Mohan Rao also came to know my relationship with Sheela; I belong to a respectable agricultural family and I own lands and properties; mine is a big family; my nephews and nieces are all highly educated and are employed abroad in the software field; my brothers and sisters are all agriculturists; it is true that I have started a company called Annamalayar Real Estates consisting of myself and three more persons and through that Real Estate, a property owned by Sheela was sold on 27.10.2005 and my company got the commission; Ex.P.2 is the said sale deed; P.W.4 is speaking falsehood that on 09.11.2005 in the evening I along with the other accused entered the house of Sheela; P.W.4 knows list witness Arumugam for 25 years and he is a concocted witness; I did not go to the house of Sheela on 09.11.2005 and therefore to say to the contra is false; on 10.11.2005 there was a talk in the town about the murder and therefore I went there; my partners in the real estate business were also there; police did not allow anybody to enter the crime scene; on 11.11.2005, I was asked to appear in the police station and therefore I went; my partners in the real estate business were also there; P.Ws.1, 2, 3 and 13 were also there; A2 and A3 were also there; list witness No.7 (Arumugam - owner of Sumangali Jewellers) was also there; all of us were enquired independently; all of us who were present in the police station were divided into various groups and taken to various police stations in the Salem limit where everyone of us were tortured; on 11.11.2005 police lifted my finger impression besides that of my partners, P.W.13 and some unknown persons in separate sheets; myself, my business partners, P.W.13 and list witness Arumugam were illegally kept in the police station from 11.11.2005 till 15.11.2005, during which time, we were tortured; on 16.11.2005, myself and A2 were produced in court; I have not given any confession statement; I have not given any articles which were recovered; all the recovered articles, except M.O.9, were not recovered at my instance; I have no connection whatsoever with the recovered articles, except M.O.9; list witness Arumugam - owner of Sumangali Jewellers is a rich person and several rich persons were left out; but however with their help all the incriminating objects were gathered and making use of the other articles available in the house, the case has been foisted upon me."

13. A2 had also filed a written statement. In that he had denied his arrest on 15.11.2005; his alleged confession statement and the alleged recoveries stated to have been made by him as

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false. He would state that he was taken to the police station on 11.11.2005, where, he was beaten and compelled to become an approver. It is his further stand that he continued to be in the police station from 11.11.2005 till 16.11.2005, on which day, he was produced in court. He would then complete by stating that he has no connection whatsoever either with A1 or A3 and that he had not produced any incriminating objects. A3 had also filed a written statement. In that he had denied his arrest on 27.11.2005 as spoken to by P.W.21 and consequently, he denied having given any confession statement leading to the recovery. He would also state, as stated by A2, that from 11.11.2005 he was in the police station, during which time, he was beaten and tortured. He was compelled to become an approver and ultimately, he was produced in court on 27.11.2005. He denied that any articles had come to be recovered at his instance.

14. On the side of the defence, four witnesses were examined and Exs.D.1 to D.16 have come to be marked. D.W.1 is the Correspondent Cum Photographer of "Dinamani", a Tamil Daily. The said Tamil Daily is a sister publication of "Indian Express", an English Daily. The Corporate Office of the two Dailies is in Chennai, which had won several awards. The Branch Office of those Dailies is in Coimbatore and the reporting office is at Salem. D.W.1 works in the reporting office of the Daily at Salem. Whatever news / information he gathers in Salem District, he used to transfer the same to the Branch Office / Publication Office at Coimbatore. There is a Deputy Editor and a team of Sub-Editors to scrutinize the news before publishing it. After such scrutiny, the news item would be given separate headings and then published. Public will get the Daily edition of "Dinamani" everyday morning and it has a wide circulation. On 10.11.2005, the news about the murder of Mohan Rao and his family members were collected and then sent to the Coimbatore Office. Such news were published in the next day Daily. Daily issue of "Dinamani" dated 11.11.2005 had sixteen pages and the murder crime in this case was published in the first page of that Daily on 11.11.2005. The report in column No.6 shows that on top of the refrigerator in the house, some jewels were found, which were not taken by the thieves. It is D.W.1, who collected that information and passed it on to the Branch Office. However he did not visit the crime scene on 10.11.2005. Ex.D.1 is the said publication. Ex.D.2 is the publication of the said Tamil Daily dated 13.11.2005. It has twenty pages. At page No.5, the news about the murder case is reported. Column No.2 of the report in that page shows that real estate owner Logu @ Loganathan (obviously referring to A1) and two of his close friends are being interrogated by the police. It is he who had collected that information and sent it to the publication office at Coimbatore. Ex.D.3 is the issue of the Tamil Daily dated 15.11.2005. It has twelve pages. In page No.3 of that

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Daily, the news collected by D.W.1 regarding the crime is found reported. D.W.1 collected all the details referred to above with utmost responsibility as a "reporter" and then forwarded it to the Coimbatore office. Any good incident or bad incident that takes place in Salem, he would collect information about the same and forward it to the Coimbatore office. Only on the day of the occurrence he went to the crime scene and on rest of the days, he received information from the police officials investigating the crime and the superior officers, which he sent to the publication office at Coimbatore.

15. D.W.2 is the reporter (Salem Division) of "Dinamalar", a Tamil Daily, which has a wide circulation. He used to forward the details collected by him to the editor of "Dinamalar", who in turn will go through it and then publish it in the paper. He would state that he gathered news about the murder of three persons in Shevapet, which he forwarded to the editor and that report stands published. D.W.2 had believed that the information collected by him is true and that it was not his imagination. He would state that his report is based on hear-say materials collected by him. But however he does not remember the source for such hear-say material. Ex.D.4 is the edition of the Tamil Daily "Dinamalar" dated 11.11.2005 having fourteen pages. At page No.7 of that Daily, the report about the crime is published. In column No.4 of page No.7 it is reported that the murder might be in connection with a lady or business rivalry. Page No.11 of that Daily also contains certain information about this crime collected and sent by him. It is Ex.D.5. The report about the incident at page Nos.7 and 11 is on the details collected by him with responsibility. This witness had contacted the Investigating Officers and like him, reporters of other Dailies also contacted the Investigating Officers. Whenever the reporters contact the Investigating Officers, they used to question about the progress of the investigation. Ex.D.6 is the issue of the Tamil Daily "Dinamalar" dated 14.11.2005. Page No.11 of that Daily contains a report about this incident showing that gold worth Rs.20 lakhs had been stolen, which had been recovered by the police. That report also shows that a jewellery owner, a press owner and a real estate owner are interrogated by the police and this witness got that information from the police officers. He would state that the report sent by him to the regional office is based on responsible collection of materials and not based on information given by sundries in the road.

16. D.W.3 is the reporter of a Tamil Daily namely, "Maalai Malar", working at Salem. It is an evening Daily. Regarding the murder crime in this case, he went to the crime scene on 10.11.2005 and enquired. Like him, there were many other reporters. Police officers alone gave him the details of the crime. This witness and

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others used to see P.W.21 (Assistant Commissioner of Police), Deputy Commissioner of Police and higher-ups everyday and whatever information they used to gather at that time, they will edit and then send it to the publication office. While doing so, D.W.3 had acted with utmost responsibility. The reporters used to examine the people living nearby besides the police officers and the kith and kin of the deceased. The ultimate authority to publish the articles is the editor himself. Ex.D.7 is the issue of the Tamil Daily "Maalai Malar" dated 11.11.2005. It has eight pages. In paragraph No.7 of that report, it is mentioned that about a few days prior to the occurrence, five persons had entered the house (crime scene) and intimidated the inmates. Ex.D.7 also contains some other information about the crime. Ex.D.8 is the daily issue of "Maalai Malar" dated 12.11.2005. It has eight pages. There is a publication about this incident at page No.1. The headline of that report shows that a real estate owner has been apprehended. It also shows that real estate owner Logu (obviously referring to A1) has committed murder by engaging hirelings. It's continuation is at Page No.3, which shows that the said Logu had been secured by the police and interrogated. D.W.3 had acted with utmost restraint and responsibility in sending that news for publication. Ex.D.9 is the copy of "Maalai Malar" dated 13.11.2005. In page No.2 of that Daily, it is reported that the examination and interrogation of A1 and two of his close friends is beyond doubt. Ex.D.10 is another issue of the Tamil Daily dated 14.11.2005. In Ex.D.10 there is a report that A2 and A3 are also involved in the murder and besides them, five more persons have also been taken into custody, who are all kept in a secret place for interrogation.

17. D.W.4 is the reporter from Salem District for Tamil Daily "Dinathanthi", which has a wide circulation. It is a morning issue. D.W.4 had been working as the reporter in that Tamil Daily for the past 25 years. Whatever information he collects, it would be forwarded to the publication office. As reporter, he has access to all the officials. He acts in the discharge of his duties with utmost restraint and complete responsibility. If there is any occurrence shocking the conscience of the society, he would contact the Investigating Officer and get details about the crime and then forward those details to the editor. He will never contact sundries in the road; collect information from them and then on that basis, send any report to the editor. Ex.D.11 is the issue dated 11.11.2005 of the Tamil Daily. It has 24 pages. In Page No.2, there is a report about this crime. All those details were given to him by the police. This witness is not afraid to see police officials of higher rank. That report shows that the jewels that would be normally worn by Sheela were found on the refrigerator. The report also shows that from the house, where the crime was committed, neither jewellery nor cash was found missing. In page No.2 of that edition, there is a boxed item

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indicating the absence of the whereabouts of the driver (obviously referring to P.W.3). That boxed item is Ex.D.12. Ex.D.13 is the copy of the Daily dated 13.11.2005. It has thirty pages. At page No.10 there is a report that the investigation done so far had disclosed that a real estate owner of Kichipalayam had murdered. Ex.D.14 is the copy of the Tamil Daily dated 14.11.2005. It contains 22 pages. At page No.5 of that Daily, there is a report that it has come to know that the jewellery shop owner has no connection with the murder; a printing press owner is involved in the crime and that the said printing press owner, being the son of a policeman, was always found in the police station doing panchayat. A part of the report also shows that by then a real estate owner, a printing press owner and two more persons are in police net and they were all interrogated in a secret place.

18. Mr.B.Sriramulu, learned senior counsel appearing for the first accused (A1) began his argument by taking us through the evidence of P.W.17 to contend that P.W.17 did not depose as to what his qualifications are. Learned senior counsel took us through Police Standing Order 801 to highlight that if a person has to be treated as an expert in finger prints, he must satisfy the said Police Standing Order. Admittedly, P.W.17 did not depose that he possesses any such qualification. Therefore this court must evaluate the evidence of P.W.17 as the evidence given by an ordinary person and not as that of an expert. In other words, the evidence of P.W.17 does not satisfy the requirements of Police Standing Order 801. It is then submitted by the learned senior counsel that P.W.17 did not disclose during the investigation (see the evidence of P.W.21) that he had lifted the chance prints available in the almirah. Chance prints, which were compared with the specimen finger impressions of A1, are shown to have been available only in the almirah. Therefore in the absence of a disclosure at the earliest point of time that chance prints were available in the almirah, P.W.17's oral evidence before court that he lifted such chance prints from the almirah cannot be easily accepted. The observation mahazar shows that there was a blood stained knife just on the top of a blood stained nighty lying close to the dead body of Sheela. No steps whatsoever have been taken either by P.W.17 or by P.W.21 to examine the said blood stained knife with reference to any chance prints available therein or even to match the blood group available therein with that of any of the deceased. If it had been done, then the prosecution would have definitely secured the best possible clue on the identity of the assailants, which had not been done. This failure is fatal. If really P.W.21 had come to know on 11.11.2005 from the mouth of P.W.4 about the suspicious movement of A1 to A3 into the house of the deceased, then the continued silence of P.W.21 till 15.11.2005, on which day only he is shown to have arrested A1 and A2, speaks volumes about the falsity and hollowness of the prosecution case.

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No prudent police officer, that too, in the rank of an Assistant Commissioner of Police would keep quiet without even searching the house of A1 to A3 to find out whether there are any incriminating objects available or to spread the net for the arrest of those suspects from 11.11.2005 onwards. For the entirety of the recovery relied upon by the prosecution, P.W.15 alone is shown to be the only witness. P.W.15 is the Village Administrative Officer and he is at a far off place from the police station and the crime scene and therefore there is no reason at all as to why he must be present at all times throughout the day on 15.11.2005 when the arrest of A1 and A2 was effected and recoveries were made and on 27.11.2005 when the arrest of A3 was effected and recoveries were made. When the evidence itself shows that the place of arrest and the place from where the recoveries are made are in a busy area, where the presence of innumerable people are shown, then, there is no reason at all as to why P.W.21 had not chosen to have any one respectable witness from that locality to speak about the recovery. There is no explanation at all whatsoever in this regard. Therefore the mandatory requirement of section 100 (4) of the Code of Criminal Procedure is violated. Even otherwise, the evidence of P.Ws.15 and 21 run contra to each other as to who exactly reduced the various documents into writing. P.W.21 would state that to his dictation, his subordinate reduced into writing all the documents while P.W.15 would state that it is P.W.21 and P.W.21 alone wrote all the documents in his own handwriting. If the above evidence of P.W.15 is accepted in preference to the evidence of P.W.21, then the entire recovery should be disbelieved. If P.W.21's evidence is accepted in preference to the evidence of P.W.15, then P.W.15's presence at the time of arrest and recovery must be disbelieved. D.Ws.1 to 4 are independent persons. They are shown to be fearless reporters of four different reputed Tamil Dailies having a wide circulation. Exs.D.1 to D.14 are the various pages in the Tamil Dailies in which they are working. Evidence of D.Ws.1 to 4 and Exs.D.1 to D.14 establish beyond doubt that even on 11.11.2005 all the accused put up for trial along with some other suspects have been taken into custody by the police. There is no reason to disbelieve the evidence of D.Ws.1 to 4 and the contents of Exs.D.1 to D.14. If this court believes the evidence of the defence witnesses, then the arrest of A1 and A2 on 15.11.2005 and the arrest of A3 on 27.11.2005 as spoken to by P.Ws.21 and 15 are definitely false. If the arrest is false, then the recoveries following the arrest must also be disbelieved. Learned senior counsel, relying upon AIR 1988 SC Pg.633 (Laxmi Raj Shetty Vs. State of Tamil Nadu) would argue that the evidence of D.Ws.1 to 4 and Exs.D.1 to D.14 really deserve acceptance. Even assuming that the evidence of P.Ws.15 and 21 must be believed on the arrest of the various accused, yet, the recoveries stated to have been made at the instance of the respective accused on their arrest should be disbelieved because, the evidence of P.Ws.15 and 21 do definitely

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show that at all important times both did not enter the house of the respective accused, from which alone the respective accused are shown to have come out with the incriminating objects, which they are shown to have produced. There is nothing on record to show that the places from where the accused are shown to have come out with the incriminating objects are in the exclusive control and occupation of the respective accused. If that is so, then the recovery evidence must be disbelieved on that ground also. Learned senior counsel would further argue that the evidence of P.W.4 is wholly unreliable for so many reasons. He is very close to Arumugam (list witness No.7), who had not been examined in this case. He also knows the family of the deceased very well. He also knows A1. If really P.W.4 had seen A1 to A3 entering the house of the deceased on the night of 09.11.2005 and when it has come to light that three persons in that house were found murdered on the morning of 10.11.2005, which P.W.4 definitely knows, then, there is no reason at all as to why he must keep quiet till 11.11.2005 to come out with the version which he had now deposed in court. Therefore it is submitted by the learned senior counsel that this court, without any hesitation, should disbelieve the evidence of P.W.4. Mr.B.Sriramulu, learned senior counsel brought to our notice a judgment of the Hon'ble Supreme Court of India in the case reported in 2002 – 1- SCC Pg.351 (Munshi Prasad Vs. State of Bihar) to contend that the defence witnesses are entitled to be treated on par with the prosecution witnesses. Learned senior counsel also relied upon 2003 – SCC Crl. Pg.481 (State of Uttar Pradesh Vs. Arun Kumar Gupta) to contend that when there is violation of section 100 (4) of the Code of Criminal Procedure and when there is no reasonable explanation for not summoning any independent witnesses residing in that locality, then the court would have every reason to doubt the recovery. It is argued by the learned senior counsel that the documents evidencing the bank transactions enclosed to Ex.P.9 do not satisfy the requirements of Bankers' Book Evidence Act namely, the necessary certificate as contemplated under the said Act at the foot of each document had not been made and it is admitted by P.W.12. If that is so, then, the documents enclosed to Ex.P.9 will lose their evidentiary value and if they are so discarded as inadmissible, then the evidence of P.W.12 based on those documents about the pledge transaction between Mohan Rao and the bank and Sheela and the bank must also be disbelieved. It is argued by Mr.B.Sriramulu learned senior counsel that P.W.17 – even assuming that his evidence deserves acceptance – had examined only the chance prints (C1) with the finger prints of A1 and his report is also only with reference to those prints alone. His report is totally silent for the remaining chance prints (C2, C3 and C4). Therefore his report and his evidence are not complete and on that sole ground, his evidence must be rejected. Lastly, without prejudice to the above arguments, learned senior counsel would argue, having regard to the case laws cited by him viz., 2006 (13)

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Scale Pg.467 (Aloke Nath Dutta Vs. State of West Bengal); AIR 2007 SC Pg.848 (Bishnu Prasad Sinha Vs. State of Assam) and 2002 LW (Crl.) Pg.673 (Abdul Razak @ Razak & Others Vs. State represented by Inspector of Police, Cheranpadi P.S.), that when the entire prosecution case rests only on circumstantial evidence, it would be inappropriate to inflict death sentence on the convicted persons. It is also argued by the learned senior counsel that this is not one of the rarest of the rare cases to award death sentence.

19. Mr.K.S.Dinakaran, learned counsel appearing for A2 adopted the arguments of Mr.B.Sriramulu learned senior counsel in his attack on the credibility of P.W.4. Learned counsel also sailed with Mr.B.Sriramulu learned senior counsel's submissions on the alleged arrest of the accused (A2) and the recovery shown to have been made. He also heavily relied upon the failure on the part of the police in not recovering the blood stained weapon available in the crime scene itself for subjecting it to any chemical examination. Mr.V.Gopinath, learned senior counsel appearing for A3, besides adopting the arguments of Mr.B.Sriramulu learned senior counsel, would contend that the recovery of M.Os.69 to 72 and M.O.21 are heavily relied upon by the prosecution to connect A3 with the crime. There is no legal evidence before court that M.Os.69 to 72 are that of the deceased. The evidence of P.W.12 identifying M.O.21 as the jewel pledged in his bank by the family of the deceased is open to serious doubt for the following reasons:

> "M.O.21 and the other articles shown to have been recovered from A3 have been lodged with the court on 28.11.2005 / 29.11.2005 itself; if that is so, then M.O.21 would not be available in the police station on 30.11.2005 to enable P.W.12 to identify it; does it not mean that he had in his mind some other article and if that is so, his evidence before court identifying M.O.21 as one of the pledged jewels, must also be doubted."

Recovery of a blood stained weapon (M.O.73) at A3's instance containing the blood group tallying with the blood group of the deceased alone cannot be made use of – in a case of circumstantial evidence – to connect the accused with the crime. Learned senior counsel also attacked the credibility of P.W.4's evidence on the same lines as attacked by Mr.B.Sriramulu learned senior counsel. Mr.V.Gopinath learned senior counsel relied upon several case laws to contend that even assuming that the prosecution had established the guilt of the accused, yet, this being not the rarest of the rare cases, death sentence is not warranted.

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20. Mr.N.R.Elango, learned Additional Public Prosecutor, defending the State would primarily attack the credibility of the evidence of D.Ws.1 to 4 contending that their evidence is only in the nature of hear-say evidence. If they have perceived a fact personally and if they report that fact in paper, then, the criteria in appreciating the same would be totally different. On the other hand, when a matter reported in the paper is not their personal perception of facts but it is only from another source, then it is in the nature of hear-say evidence. The Hon'ble Supreme Court of India in the judgment reported in 1988 SCC Crl. Pg.633 (Laxmi Raj Shetty Vs. State of Tamil Nadu), brought to our notice by Mr.B.Sriramulu learned senior counsel, had held that the report in a paper is only in the nature of hear-say evidence. Therefore this court must eliminate the entire evidence of D.Ws.1 to 4 and Exs.D.1 to D.14, which undoubtedly show that they have not perceived any fact personally from a spot inspection or a spot enquiry but they have perceived the facts from some other source. If that is done, then, there is nothing on record to show or even a remote chance to infer that A1 to A3 were in the police net even on 11.11.2005, which alone would enable this court to doubt the arrest of A1 and A2 on 15.11.2005 and A3 on 27.11.2005. By taking us through the records namely, remand report for A1 and A2 and the remand report for A3 before court (A1 and A2 were produced before the same court while A3 was produced before another court), it is argued by the learned Additional Public Prosecutor that the remand Magistrate had not even noted in the remand report that any of the accused had complained of any ill-treatment or illegal custody. Therefore in the absence of any noting in the respective remand reports about any mal-treatment or illegal custody of any of the accused with the police as argued now before this court and if the evidence of D.Ws.1 to 4 coupled with Exs.D.1 to D.16, is eliminated from consideration for the reasons stated by him, then, there is no legal material at all to doubt the arrest of the accused (A1 and A2 on 15.11.2005 and A3 on 27.11.2005) as spoken to by the prosecution. It may be true that P.W.15 is the only witness, who was present throughout at all times with P.W.21. Section 100 (4) of the Code of Criminal Procedure is applicable to a case where search is made. Here admittedly no search of any house is made and therefore the requirement of section 100 (4) of the Code need not be complied with. It is argued by the State Counsel that having regard to the difficulties which courts in India are experiencing in dealing with cases in which witnesses are turning hostile for no rhyme or reason, this court should not disbelieve the credibility of the prosecution witnesses with respect to the arrest and recovery on the sole ground that Government official witnesses alone are made available for such arrest and recovery. According to him, police officers, in the current situation, would not be

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committing any mistake in choosing a Government official alone, since atleast to certain extent, police officers may be confident that the witnesses will not let down the prosecution at a later stage. It may be true that in the evidence of P.Ws.15 and 21 there is contradiction as to who exactly wrote the records. That by itself, according to the State Counsel, would not discredit the evidence of P.Ws.15 and 21 regarding the arrest and recovery, if this court is fully convinced that their evidence on material aspects is otherwise found to be trustworthy. In this case jewels weighing nearly 163.25 sovereigns are found to have been stolen, which were recovered in addition to 33-1/2 kgs of silverwares, which was also recovered. Such is the huge volume of the stolen articles, which no police officer can even dream of planting on any particular accused just to fabricate the case based on such recovery. Therefore it is argued that the entire arrest and recovery must be believed. As far the silence on the part of P.W.4 till 11.11.2005 is concerned, it is argued by the learned Additional Public Prosecutor that P.W.4 had no suspicion at all whatsoever in his mind on 09.11.2005 when he saw A1 to A3 entering the house of the deceased. Even if he had any suspicion in such movement, it is on record that when he brought it to the notice of Arumugam (owner of Sumangali Jewellers - list witness No.7 - not examined in court), he had been simply brain washed by him stating that as they are already known to each other, there is nothing serious. Therefore it is argued by the learned Additional Public Prosecutor that P.W.4 would not have even had the slightest doubt in his mind on 10.11.2005 when he came to know about the incident, that A1 would have had a role to play in the murder. It is available on record that A1 had gained the confidence of Sheela and he was always by her side. Therefore the argument is that, P.W.4's conduct in keeping silent till 11.11.2005 cannot be viewed seriously. Learned Additional Public Prosecutor, in meeting the argument based on Bankers' Book Evidence Act not being complied with, would argue that this is not a case where the relief - as it is done in civil cases - is based on the documents supplied by the bank and only in that, the requirement of the said Act must be complied with. According to him, the documents enclosed to Ex.P.9 are relied upon to show a collateral transaction namely, on two particular days Mohan Rao (D1) pledged certain articles with the bank; on a particular day, Sheela (D2) pledged certain articles with the bank and on 27.10.2005, those articles were redeemed by the borrowers by paying the principal and the interest. By this exercise - according to the learned Additional Public Prosecutor, the prosecution wants to establish that the articles recovered in this case after the arrest of the accused in fact belonged to the deceased, which they had pledged earlier and which they were in possession in all probability on the day when the crime was committed. Therefore it is argued by the learned Additional Public Prosecutor that the failure on the part of P.W.12 to comply with

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the provisions of the said Act will not vitiate the prosecution case. On the argument developed by the learned senior counsel about the competency of P.W.17 giving evidence based on Police Standing Order 801, learned Additional Public Prosecutor brought to our notice the Amendment made by the Tamil Nadu Government to the Prisoners' Identification Act and a Government Order issued re-designating finger print experts in the Finger Print Bureau as Inpsector of Finger Prints. Therefore it is submitted by the learned Additional Public Prosecutor that P.W.17 is the person who is competent to examine any crime scene and lift chance prints available there.

21. In the light of the arguments advanced by the learned senior counsels appearing for the convicted accused and the learned State counsel, we went through the entire materials available on record. It may be true that the incident must have shocked public conscience. A family consisting of three members i.e., husband, wife and son were brutally murdered. Passion and sentiments will have no play at all in dispensing justice. The court should have a dis-passionate approach while it analyses the case records. The prosecution had definitely established, by medical evidence, that three persons concerned in this case namely, Mohan Rao, Sheela and Prabhu were brutally murdered. There is medical evidence to the above effect. Admittedly, in this case there is no direct evidence to the crime. In other words, the entire case rests upon circumstantial evidence only. A1 is known to Sheela, is not in doubt at all. He has attested Ex.P.2, xerox copy of a registered sale deed dated 27.10.2005 executed by Sheela (D2) in favour of one Sahabudeen. A1 had filed a lengthy written statement at the end of his questioning, in which also, he had admitted his friendship with Sheela. There is evidence that Sheela used to visit Arumugam's (not examined) shop. A1 in his written statement had stated that "when an enquiry was conducted in the police station summoning Arumugam and Sheela, he was present in the police station in support of Sheela". Therefore it is clear that A1 appears to be playing a leading role or atleast a substantial role in the affairs of Sheela. P.W.2 is the servant-maid in the house of the deceased. When she reported for duty on the morning of 10.11.2005, the gruesome murders had come to be noticed. She contacted P.W.1, who in turn, after observing the dead bodies, lodged the complaint with the police, thus, setting the law in motion.

22. The prosecution primarily relies upon the oral evidence of P.W.4; P.W.12; P.W.15; P.W.17 along with his report and the recoveries made after the arrest of the accused. The prosecution case is that the recovered objects belonged to the deceased. If the above referred to materials are worthy of acceptance, then, the defence may not have any case. But on the contra, if the above referred to materials have to be doubted, then, the State may have

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no case at all. Therefore having that broad principle in our mind, we analysed their evidence. P.W.4's evidence is limited to the extent of speaking the entry of A1 to A3 into the house of the deceased around 8.00 or 8.30 p.m on 09.11.2005. The line of cross examination of this witness is directed at establishing that Sheela was having an affair with Arumugam; the complaint given by Arumugam in the police station against Sheela; Arumugam's friendship with Sheela and so on and so forth. We find that this witness had not been cross examined in any worthwhile manner to doubt his evidence that he saw A1 to A3 entering the house of the deceased on the night of 09.11.2005 as deposed by him in his evidence in chief. It is contended by learned senior counsel that though this witness was passing the crime scene on the next day morning noticing the and he noticed the presence of police and a huge crowd, yet, he failed to disclose to anyone, including the police, at that time that he saw A1 to A3 entering the house on the previous night and therefore such conduct of P.W.4 would discredit his evidence. In meeting this point, learned State counsel argued that on the previous night itself P.W.4 informed Sumangali Jewellery owner Arumugam about the entry of A1 to A3 into the house and P.W.4 would state that on so informing, Arumugam told him (P.W.4) very casually that they knew each other already. This response from Arumugam on the previous night would have probably given an impression to P.W.4 that such visit must be a casual one. That impression might have been in his mind and therefore it is not possible to rule out that when he saw the police and a huge crowd opposite to the house of the deceased on the next day morning and the murder of the three persons, it could not have struck him at that momentous time that any of the accused would have had any role at all in the crime. He had been examined by the State only for the limited purpose of showing the entry of the accused in the house of the deceased on the previous day night. If he is really an obliging witness, then the Investigating Agency might have put many more materials in their favour to his mouth, which they have not done. Of course, there is nothing on record to show as to how P.W.21, the Investigating Officer, had come to know that, if examined, P.W.4 would throw some light. P.W.21 had admitted that he examined Sumangali Jewellers owner Arumugam (not examined) on 11.11.2005 and suspecting his involvement, his finger print was also lifted. P.W.21 then stated that on the same day he examined P.W.4 also. We only say that it is a part of the investigation. P.W.21 had been cross examined by A1 suggesting that he had taken into custody, among other persons, Arumugam (owner of Sumangali Jewellers) on 11.11.2005 itself and tortured. This gives us an indication to infer that when Arumugam was so examined on 11.11.2005, probably, he might have told the police officer what P.W.4 told him on the night of 09.11.2005. Excepting commenting upon the silence maintained by P.W.4 in not coming forward to disclose what he saw on the night of 09.11.2005 till 11.11.2005, no

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other serious argument is advanced before us to condemn the evidence of P.W.4. In our opinion, the conduct of P.W.4, as brought to our notice, would not affect his evidence in general. His statement recorded on 11.11.2005 had also reached the court by the next day. P.W.4's evidence is that, he also knew A2 and A3, as they used to come to the shop of A1. Learned State counsel relied upon a judgment of the Supreme Court in the judgment reported in 2005 (1) SCC (Crl.) Pg.642 (State of U.P Vs. Satish) to contend that a duty is cast upon the defence to question specifically the Investigating Officer as to why there was delayed examination of a key witness and if it is not done, the accused cannot take advantage of the delayed examination of a key witness to destroy the prosecution case. Therefore we went through the evidence of P.W.21 to find out whether he had been cross examined at all for the delayed examination of P.W.4 and we found none. We extract

paragraph No.18 of the judgment of the Supreme Court referred to earlier hereunder:

> "18. As regards delayed examination of certain witnesses, this court in several decisions has held that unless the investigating officer is categorically asked as to why there was delay in examination of the witnesses the defence cannot gain any advantage therefrom. It cannot be laid down as a rule of universal application that if there is any delay in examination of a particular witness the prosecution version becomes suspect. It would depend upon several factors. If the explanation offered for the delayed examination is plausible and acceptable and the court accepts the same as plausible, there is no reason to interfere with the conclusion. (See Ranbir Vs. State of Punjab, Bodhraj Vs. State of J & K and Banti Vs. State of M.P.)"

Under these circumstances, finding no infirmity in the evidence of P.W.4, we accept it, to hold that the prosecution had definitely established the entry of A1 to A3 into the house of the deceased at about 8.30 p.m or so on 09.11.2005.

23. Now we go to the evidence of P.W.17. Coming to the attack on the competency of P.W.17, the finger print expert, we went through Police Standing Order 801. It shows that in each State there is a finger print bureau, in which, finger prints of criminals are kept on record. Police Standing Order 801 (g) defines "expert" as an officer, who has been declared by the All India Board of Examination for Finger Print Experts to be competent to examine, classify and give expert opinion on finger impression. Therefore, to qualify as an expert under Police Standing Order 801,

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one must have been cleared by the All India Board of Examination for finger print experts. Admittedly, in this case P.W.17 had not deposed that he is an expert possessing such clearance by the All India Board of Examinations. Identification of Prisoners Act 1920, hereinafter referred to as the Act, deals with taking measurements of an arrested person. In this case P.W.17 had lifted chance prints from the crime scene. Police Standing Order 801 prescribes the method for taking finger prints. P.W.17 had not even been cross examined that he had not followed the method prescribed under the Police Standing Order in lifting finger prints. P.W.17 in his evidence had stated that he is the Inspector of Police (Finger Prints). Government passed G.O.Ms.No.811 Home (Police-V) Department dated 29.05.1997 re-designating the various posts in the finger print bureau and among others in the finger print bureau, finger print expert was re-designated as Inspector of Police (Finger Prints). Therefore when P.W.17 claims that he is the Inspector of Police (Finger Prints), the court can have no reason to disbelieve his such statement, in the absence of any cross examination by the defence. In other words, P.W.17 had not even been cross examined that he is not a qualified expert. As noted earlier, he did not depose that he is an expert as provided for under Police Standing Order 801. But none-the-less, he had stated that he is the Inspector of Police (Finger Prints). Accepting his evidence that he is the Inspector of Police (Finger Prints), if we apply our mind to the re-designation referred to above and G.O.Ms.No.811, it follows that P.W.17 would be satisfying Police Standing Order 801. We reiterate that, in the absence of any cross examination on his competency to take finger prints or that he is not an expert, we are inclined to accept his evidence as an expert. We have already referred to his evidence. Totally seven chance prints were available, out of which, C1, C2, C3 and C4 lifted by him from the almirah of the house, where the crime was committed, alone survived for further examination. Ex.P.26 is the letter from the Office of the Finger Print Bureau, Salem to the court. To this, several enclosures are attached. The certificate given by P.W.17 is also enclosed to this. An argument is advanced by the learned senior counsels, by drawing our attention to this report available at Page No.104 of the paper book that, this report shows that chance print C1 alone was compared with the subsequent finger prints of A1 and the report is silent with reference to the other three chance prints namely, C2, C3 and C4. This argument does not appear to be correct since, when we go through the entirety of this report, we find that it undoubtedly shows that all the four chance prints namely, C1 to C4, were developed and examined with the prints of A1 taken in court and they were found to tally as indicated therein. P.W.17 had given details about the places which he observed inside the house where the crime is shown to have taken place and the number of persons whose finger prints have been sent to him. P.W.17 had also admitted that specimen prints of

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15 suspects have also been sent to him, which he examined and found to be not tallying with the chance prints. He was not cross examined at all about his competency in any manner, except suggesting that he is an obliging witness by giving a report as though chance prints were lifted and compared. In other words, there is no cross examination at all in particular reference to the correctness or otherwise of his report. Therefore without any hesitation, we hold that the prosecution had succeeded in establishing that from an almirah available inside the house where the crime was committed, chance prints marked as C1 to C4 were lifted by P.W.17 and when compared with the specimen impressions of A1, they found to tally. If this fact remains established, then, even at this stage we want to highlight that a duty is cast upon A1 to explain as to how his finger prints were available in the almirah inside the house where the crime was committed. But as noted earlier, he had not come out with any explanation at all on this. One can understand A1's finger prints available in the outer door, since the prosecution itself had accepted that he is known to Sheela and therefore he would have had every chance to lay his hand on the outer door but definitely not in an alimrah inside the house. Therefore in our opinion the presence of finger prints of A1 in the almirah inside the house, where the crime was committed, is a telling circumstance against A1.

24. Let us now apply our mind to the evidence of P.W.12. We have already referred to his evidence in detail, which shows that Mohan Rao and Sheela pledged certain gold articles in the bank, which they redeemed on 27.10.2005. The documents enclosed to Ex.P.9 admittedly do not satisfy the requirement of Bankers' Books Evidence Act. The copies of the documents evidencing the pledge transactions attached to Ex.P.9 do not contain the certificate as prescribed in section 2(8) of the Bankers' Books Evidence Act. P.W.12 had also admitted the infirmity. Under section 4 of the above referred to Act, certified copy of any entry in a Bankers' Book shall be received as prima facie evidence of the existence of such entry. In other words, there will not be any need for oral evidence to prove an entry in a Bankers' Book if a certified copy as contemplated under the above referred to Act is produced in court, which by itself is admissible, to show the existence of such entry. In this case, we have the primary evidence of P.W.12 himself, who was then the Branch Manager of Canara Bank at Guhai. He had personally spoken about Mohan Rao opening a savings bank account; his wife Sheela opening a savings bank account; the pledge transactions of Mohan Rao; the pledge transaction of Sheela; money lent on those transactions and redemption of the pledge on payment of the principal and interest. Ex.P.9 and the documents enclosed to it is only in the nature of corroboration to the oral evidence of P.W.12. If the prosecution had filed Ex.P.9 with the enclosures alone, without examining P.W.12, probably, this court cannot rely

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upon such copies in proof of transactions entered into by Mohan Rao and his wife Sheela with the bank. We reiterate that Ex.P.9 and it's enclosures (enclosures not satisfying the requirement of Bankers' Books Evidence Act) are only in the nature of corroboration evidence to the primary evidence of P.W.12. It is not as though any relief is asked on the enclosures attached to Ex.P.9. Only in such cases, the court has to consider whether such documents satisfy the requirement of Bankers' Books Evidence or not. Therefore we reject the argument advanced by the learned senior counsels that due to non-compliance of the provisions of the Bankers' Books Evidence Act the certified copies enclosed to Ex.P.9 are inadmissible in evidence. Accordingly we conclude that P.W.12's evidence establishes beyond doubt that Mohan Rao and Sheela had pledged some articles with the bank for raising a loan, which they ultimately redeemed on 27.10.2005.

25. We now go to the evidence of P.W.21 and the evidence of P.W.15 regarding the arrest and recovery. According to P.W.21, A1 was first arrested on 15.11.2005 at about 8.30 a.m; he was examined, leading to various recoveries and on his further conduct, A2 came to be arrested by about 1.45 p.m on the same day. A2 was also examined and recoveries were made. According to P.W.21, A3 was arrested on 27.11.2005. The arrest of A1 and A2 on 15.11.2005 is heavily commented upon by the defence stating that the said arrest is false. According to them, A1, A2 and A3 were taken into custody by the police on 11.11.2005 itself. For this purpose, the defence heavily relies upon the oral evidence of D.Ws.1 to 4 and Exs.D.1 to D.16. Learned senior counsels appearing for the convicted accused relied upon the judgment of the Supreme Court reported in 1988 SCC Crl. Pg.633 referred to supra to contend that the evidence of D.Ws.1 to 4, who are reporters and Exs.D.1 to D.16 deserve acceptance. Relying upon the very same judgment, the learned State counsel would argue that if this court could not conclude from the evidence of D.Ws.1 to 4 that it is not based on each one of them personally perceiving any fact, then, going by the above referred to judgment itself, wherein it was held that such evidence is only in the nature of hear-say, the court can reject the evidence of D.Ws.1 to 4. In our opinion, there cannot be any dispute that witnesses examined on the side of the defence need to be treated on par with witnesses examined by the prosecution (See 2002 – 1 – SCC Pg.351 referred to supra). As against the evidence of P.Ws.15 and 21 regarding the arrest of the accused in this case on two dates, this court has the evidence of D.Ws.1 to 4 and Exs.D.1 to D.16. Exs.D.1 to D.16 are news items touching upon the crime committed in this case in four issues of Tamil Dailies on various dates. D.Ws.1 to 4 are the reporters of those four Tamil Dailies. We have no doubt at all that the evidence of P.Ws.15 and 21 is primary in nature. Therefore we have to find out whether the evidence of D.Ws.1 to 4 are also primary in nature and if it is

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so found, then this court has to evaluate the evidence of the prosecution witnesses referred to earlier and the evidence of the defence witnesses – treating them on par - with a careful scrutiny. Learned senior counsels appearing for the defence are not disputing that the evidence of P.Ws.15 and 21 is of a primary nature. But however, their contention is that the evidence of D.Ws.1 to 4 is also primary in nature. Therefore we carefully examined the evidence of D.Ws.1 to 4.

26. D.W.1, when cross examined, had categorically admitted that whatever information he had received, are only those information which he heard and they are not from his personal perception. In further cross examination, he had admitted that the presence of certain jewels on the top of the fridge, which the robbers have not taken, was also informed to him only by police officers. But however, he could not remember the names of those police officers who gave that information. He had further admitted that the report in the issue dated 13.11.2005 that real estate owner Logu (obviously referring to A1) and two of his close associates are being examined, is also the information heard by him, which alone he had sent. D.W.2 even in his evidence in chief had stated that whatever information that came to be published in the Daily in which he is the reporter, was only heard by him. But however, he could not remember who gave those information to him. He then had added (in his chief examination itself) that as a "reporter", he has access to Investigating Officers; likewise, the other reporters also have access; during such meeting, the reporters will enquire the Investigating Officers and get details and the details given by them at that time would be the basis for compiling the information and then causing it to be published. He is firm that only police gave him all the details and he did not enquire the sundries in the road. D.W.3 had also admitted in his evidence in chief that the materials collected by him in connection with this case were furnished to him only by the police officers and that they used to meet the Investigating Officers, the Assistant Commissioner of Police, the Deputy Commissioner of Police and higher-ups everyday and the details given to them by the police officers were compiled by them and sent for publication. He had also admitted that the reporters used to enquire people around the crime scene, besides the police and the kith and kin of the deceased, to get details. In his cross examination, he had admitted that he cannot give the names of the persons who gave the details of the case to him and that he is not personally aware about the persons whose names are mentioned in the paper as having been apprehended. D.W.4 is the last of the reporter examined by the defence. He would also state in his evidence in chief that reporters would have access to the Investigating Officers, who would be contacted and details would be collected, which alone would be sent to the press for publication. He is also firm that

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no sundries in the road would be enquired to find out the details of the crime. His further evidence in chief shows that police is the source for his information. When he was cross examined, he had admitted that the news item in one of the Dailies regarding P.W.3 was furnished to him by the Deputy Commissioner of Police by name Baskar. Therefore from the materials available in the evidence of D.Ws.1 to 4, it is clear that the details regarding the crime shown to have been collected by them and passed on to the editor for publication are not as a result of each one of them personally perceiving any fact. All of them have categorically admitted that they were told so by the police officers to whom they have access as reporters. None of the witnesses gave the names of the police officers who gave that information, except D.W.4, who gave the name of Baskar, the Deputy commissioner of Police, with reference to the details published relating to P.W.3 alone. Therefore when D.Ws.1 to 4 are not certain as to the source for the information collected by them, which were later on published in the Dailies and their evidence being general in nature namely, police gave them the details, assuming that their evidence is true, the possibility of any police officer other than the Investigating Officer giving such details cannot be totally ruled out. Therefore we have no doubt at all that the evidence of D.Ws.1 to 4 is not in the nature of primary evidence; they have not personally perceived the facts which they have compiled and sent it for publication and therefore the newspaper reports namely, Exs.D.1 to D.16 are only in the nature of hear say. In other words, what the evidence of D.Ws.1 to 4 show is that they received the information from some police officers, to whom they had access and what they told each one of them have been translated as the news item in the paper. We state, at the risk of repetition, that it is clear that the evidence of D.Ws.1 to 4 is not primary in nature. Mr.B.Sriramulu learned senior counsel, relying upon paragraph No.25 of the judgment of the Supreme Court in Laxmi Raj Shetty's case referred to supra, would argue that the Supreme Court in that judgment did not accept the paper reports because the party relying upon those reports dispensed with the examination of the witnesses. Learned senior counsel also, relying upon paragraph No.25 of that judgment, would argue that since witnesses have been examined in this case, the newspaper reports become primary evidence. In our considered opinion, unless the report is based on personal perception of fact by any of the witnesses, examination of such witnesses is of no use at all to the defence, since, their evidence in court itself is in the nature of hearsay evidence. By saying so, what we mean is that, to prove the contents of the newspaper report, the source namely, the persons who gave those information to the reporters themselves must be examined. In paragraph No.26 of the said judgment, the Supreme Court had held as hereunder:

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"26. It is now well settled that a statement of fact contained in a newspaper is merely hearsay and therefore inadmissible in evidence in the absence of the maker of the statement appearing in court and deposing to have perceived the fact reported."

The word "fact" in section 3 is defined to mean and include, "state of things or relation of things, capable of being perceived by the senses." This only means that if D.Ws.1 to 4 have personally perceived the contents of the news items reported in the paper, then only the evidence of D.Ws.1 to 4 would become primary evidence. Under these circumstances, we hold that the evidence of D.Ws.1 to 4, coupled with Exs.D.1 to D.16, cannot be accepted at their face value in preference to the oral evidence of P.Ws.15 and 21. To put it otherwise, we are inclined to discard the evidence of D.Ws.1 to 4 and Exs.D.1 to D.16 for the reasons stated above, as having no evidentiary value and instead, accept the evidence of P.Ws.15 and 21 regarding the arrest and recovery, subject to their credibility, which we discuss hereunder.

27. It is true that in the places where A1 and A2 came to be arrested on 15.11.2005 and in the place where A3 came to be arrested on 27.11.2005, presence of independent witnesses have been established. Relying upon the judgment of the Supreme Court in the case reported in 2003 SCC Crl. Pg.481 (State of Uttar Pradesh Vs. Arun Kumar Gupta), it is argued by Mr.B.Sriramulu learned senior counsel that, in the absence of any reasonable explanation for not summoning any independent witnesses residing in that locality and when presence of independent witnesses are established, the recovery shown to have been made at the instance of A1, A2 and A3 respectively only in the presence of P.W.15 (Village Administrative Officer) must be doubted as it contravenes section 100(4) of the Code of Criminal Procedure. Mr.N.R.Elango, learned Additional Public Prosecutor would argue that section 100 of the Code of Criminal Procedure contemplates the procedure to be followed in searching a place. Section 100 (4) of the Code mandates "calling upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate." According to him, if, in the course of such a search, any person found in such place should be searched for suspected concealing of any article, then, section 100 (3) of the Code contemplates the procedure. In this case, such a situation had not arisen since, A1 came to be arrested in a public place namely, railway station at Salem; on his pointing out, A2 was also arrested in a public place (both on 15.11.2005), leading to the recovery and then A3 came to be arrested on 27.11.2005 leading to the recovery. It is true that P.W.15 is not living in the locality where the arrests were made on the dates referred to earlier. Could that by itself

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vitiate the recovery? This question we are posing to ourselves, assuming section 100 of the Code is attracted to the case on hand. In 1967 Crl.L.J.Pg.553 (State of Mysore Vs. Raji), a Division Bench of that court was dealing with the alleged violation of section 103 of the old Code. Sections 102 and 103 of the Old Code stands now re-drafted as section 100 of the new Code. In the case dealt with by the Mysore High Court, it appears that the witnesses to the search were found to be inhabitants of a different locality. Therefore it appears that an argument was advanced that the search itself is illegal. In that context, the Mysore High Court held as hereunder:

> "Whatever right the accused may have to resist the search if it is proposed to be made with the assistance of persons who are not inhabitants of the locality as search witnesses that would not by itself render the search illegal. AIR 1963 SC 822, Followed."
>
> "If the witnesses to the search are not inhabitants of the locality or the incriminating articles are produced even before such search is made, no question as to whether the search is illegal or whether the production of the incriminating articles can be ignored can properly arise. The real question which falls to be considered in such a case is whether the witnesses who attended the search or who were present when the incriminating articles were produced or recovered could be regarded as truthful witnesses and whether their evidence is entitled to faith."

In the judgment reported in AIR 1963 SC 822, a question arose as to whether, in effecting search, sections 103 and 165 of the Old Code is violated, would the seizure of articles itself be vitiated? In that context, the Supreme Court held as hereunder:

> "It may be that where the provisions of sections 103 and 165 of the Code of Criminal Procedure are contravened the search can be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search, the court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues, and the seizure of the articles is not vitiated."

What should be the approach of the court in evaluating the evidence of a witness to the search – which is shown to have been conducted in violation of section 100 (4) of the Code, the Supreme Court had succinctly laid down the position as hereunder in the judgment

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reported in 1998 Crl.L.J.Pg.1638 (Ronny Vs. State of Maharashtra):

> "If there is intrinsic merit in the evidence of the witness of search the same cannot be rejected solely on the ground that witness is not from the locality of search or that he was brought by the police with it. In the instant case the evidence of search witness cannot be rejected for the reasons that he was not a witness of the locality and that he was brought from place of incident by the investigating officer to witness the search. He was one of the drivers of the cars in which the investigating team came to place of search from place of incident. For the sake of convenience, he was taken as a witness for search. There is no material in the cross examination to discredit his testimony. His evidence cannot be rejected only on the ground that he was not from the locality as contemplated under sub-section (4) of section 100 Cr.P.C."

In our considered opinion, the argument advanced by the learned State counsel that when a discovery is made pursuant to a statement recorded under section 27 of the Indian Evidence Act, the requirement to comply with section 100 of the Code does not get attracted at all, appeals to us as a sound proposition. We have a case law on this point reported in 1987 Crl.L.J. Pg.563 (Manheri Rajan Vs. State) rendered by a Division Bench of the Kerala High Court. The Kerala High Court in that judgment, while dealing with the above referred to point, had answered the position in law as hereunder:

> "Section 27 of the Evidence Act does not contemplate any search or seizure. It refers only to information and the consequent discovery. Emphasis is to the information in consequence of which the discovery, which lends assurance to the information, is made. What is admissible is only the information, the correctness of which is ensured by the discovery made in consequence of it. What is allowed to be proved is only the information. The fact discovered is relevant only in proof of the information. The position in relation to searches is entirely different. In such cases importance is to the articles or things seized. Unlike Ss.100 and 165 Cr.P.C., no specific formality is provided for cases coming under section 27 of the Evidence Act. What is required is only the satisfaction of the court on the correctness of the information and its relation to the fact thereby discovered, to the extent relevant for the purpose of the case. Preparation of mahazar or presence or attestation of witnesses are only formalities on which

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the court may or may not insist in given cases for its satisfaction depending upon the facts and circumstances. If the court feels that the uncorroborated testimony of the police officer by itself is capable of inspiring confidence, there is nothing forbidding the court from doing so. Corroboration need be insisted only where it is considered necessary."

Even otherwise, having regard to the modern trend in witnesses turning hostile for no rhyme or reason, we do not find that P.W.21 had committed any illegality in fixing an official witness, whom, he might have believed that he would not let down the prosecution case later on, to stand by his side whenever an arrest is to be made leading to or not leading to any recovery. But in this case such evidence of the witness to the arrest and recovery must be above board and if it is found to be above board, there is no harm in accepting the evidence of such attesting witness. Having that principle in our mind, we went through the entire evidence of P.W.15 with utmost care. In this context, the argument of the defence to disbelieve the evidence of P.W.15 may be noted. The argument is, while P.W.15 had deposed that all the contemporary documents prepared at the time of arrest and recovery were written by P.W.21 himself whereas, P.W.21 had deposed that all those documents were reduced into writing to his narration by his subordinate. This evidence of P.W.15 by itself would add a feather in his cap, in our considered opinion as otherwise, if he is an obliging witness, he could have simply stated that all the contemporary records were reduced into writing to the narration of P.W.21. But he did not say so. In addition to the above, we do not find any material worth mentioning having been elicited as to why P.W.15 should be disbelieved for his presence with P.W.21 at all times namely, on 15.11.2005 when A1 and A2 came to be arrested initially leading to the recovery and on 27.11.2005 when A3 came to be arrested leading to the recovery. It is true that it has come out in the evidence of P.W.15 that after arrest when the respective arrested accused took the police party and the witnesses to a place known to them, he and P.W.21 were standing outside that place while the respective accused entered inside and came out with the incriminating objects. From this, it is argued by the learned counsel for the defence that one cannot be sure that the place from where the accused had come out with the incriminating objects is in their exclusive occupation. In our considered opinion, the answer must be against the defence. Neither P.W.21 nor P.W.15 knew the place from where the respective accused came out with the incriminating objects before the arrest of the respective accused and it is they who took the police party and the witnesses to the respective places. Therefore the Investigating Agency was justified in believing and acting that the place from where the respective articles came to be produced belongs to the respective

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accused and in such circumstances, the burden is on the accused to show that the respective places were not in their exclusive occupation and control but it is open to all. It is not as though the recoveries were made from a open and public place. But on the other hand, the respective accused came out of the house with the incriminating objects. Therefore it is clear that the accused had not discharged that burden while the Investigating Agency had discharged it's initial burden, relying upon the conduct of the respective accused in taking the police party and the witnesses to the respective places from inside of which alone, they came out with the incriminating objects. So is the arrest and recovery from A3. Simply because there is diametrically opposing evidence as to whether P.W.21 wrote by himself all the contemporary records or they came to be prepared to the narration of P.W.21, it is not possible to disbelieve the evidence of both the witnesses, especially when their evidence is overwhelming in nature. In 1987 Crl.L.J.Pg.563 referred to above, the Kerala High Court held that if any court feels that the uncorroborated testimony of the police officer by itself is capable of inspiring confidence, there is nothing forbidding the court from doing so and corroboration need be insisted only where it is considered necessary. P.W.21 is in the rank of an Assistant Commissioner of Police. We searched his entire evidence with care and caution and we do not get any material, on which, we can conclude that he has the motive or any reason to implicate the present accused in the crime and therefore his evidence must be doubted. On the other hand, his evidence appears to be upright brimming with confidence and therefore we have no doubt at all that his evidence regarding arrest and recovery also deserves acceptance. Under these circumstances, we believe the arrest of the accused and the recoveries at their instance as spoken to by P.Ws.15 and 21.

28. Let us now find out whether the prosecution had proved beyond doubt that the recovered objects are established to be the stolen articles from the scene where the crime was committed and whether they belong to the family of the deceased. P.W.1 had identified M.Os.1 to 7. P.W.2 is the servant-maid and she had identified M.Os.1 and 2 as the jewels which are normally worn by Sheela (D2). P.W.1's evidence is that, on festival days and on days when Sheela used to visit his house, she used to wear M.Os.1 to 7. An argument is advanced by the learned senior counsel for the convicted accused that in Ex.P.1, except mentioning the missing of Mangalasutra weighing seven sovereigns and six bangles weighing six sovereigns, there is no mention about any other missing article. An argument is also advanced by the learned defence counsel that except M.Os.1 to 7, the remaining jewels were not identified by P.W.1 as belonging to the family of the deceased. Before analysing this argument, we go to the evidence of the witnesses identifying the jewels. P.W.3 is the driver in the

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family of the deceased, who had identified M.O.1, M.O.2 and M.O.8 series. M.O.8 series are the silver anklets, in all weighing 32.170 kgs, which were given by Mohan Rao (D1) for polishing to P.W.13. P.W.3's evidence is that on 09.11.2005, Mohan Rao (D1) told him that the silver anklets referred to above have been given to P.W.13 for polishing; he is likely to get it back by the evening and with that polished silverwares, both must go to Hyderabad the next day. P.W.13 is having a shop wherein, he polishes silver articles. His evidence establishes that on 05.11.2005 Mohan Rao (D1) gave silver anklets weighing 32 kgs for polishing, which he returned at about 4.30 p.m on 09.11.2005 neatly packed in twelve plastic packets. M.O.8 series have been recovered in specie. We have already referred to the recoveries of the various articles at the instance of A1, A2 and A3. Except M.Os.69 to 72 and M.O.21 series, the rest have come to be recovered at the instance of A1 and A2 respectively. We are not indicating hereunder once again the various recoveries made at the instance of A1 and A2 on their respective arrest. Suffice it to say that the same is disclosed in the earlier portion of this judgment. P.W.12 is the Bank Manager, in whose bank, M.Os.1, 3, 5, 21 series, 22 and 23 came to be pledged and redeemed. His evidence is that, he identified all those material objects in the police station on 30.11.2005. But there is undisputed evidence to show that all the incriminating objects recovered at the instance of the respective accused were lodged in the court on 29.11.2005 itself and there is no evidence to show that those lodged articles were returned by the court to the police officer. Therefore when P.W.12 claims that he had identified the above referred to articles in the police station on 30.11.2005 and then the same articles in court, it is clear to our mind that what he had seen in the police station on 30.11.2005 could not have been the material objects referred to a little earlier. If that is so, his evidence before court identifying the very same articles also loses it's credibility. But such infirmity in the evidence of P.W.12 would only help A3, since, among M.Os.1, 3, 5, 21 series, 22 and 23, M.O.21 alone is shown to have been recovered at the instance of A3. Rest of the articles were recovered at the instance of the other accused. Despite the shortcoming in the evidence of P.W.12, the prosecution has the evidence of P.W.1 and P.W.3 identifying M.os.1 to 7. P.W.3 had also deposed that Sheela used to wear M.Os.3 to 7 when she goes out on festival days and M.Os.1 and 2 would be usually worn by her. It may be true, as admitted by P.W.3, that M.Os.1 to 7 may be jewels ordinarily available in the market and that M.Os.1 to 7 did not have any specific identity marks. In our considered opinion, this material evidence of P.W.3 is not of such a serious nature to disbelieve his evidence of identifying M.Os.1 to 7, especially when there is evidence of P.W.1 that M.Os.1 to 7 are that of Sheela. P.W.1 could not identify M.O.8 because he is not aware of it. But P.W.3 had identified M.O.8 also. M.O.8 belonged to the family of

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the deceased, is spoken to by P.W.13, the businessman, who carries on business of polishing silverwares. P.W.13 had admitted in his evidence that M.O.8 series can be purchased by anybody and that they do not carry any specific identity marks. He had also admitted that D1 (Mohan Rao) did not purchase M.O.8. But so long as the evidence of P.W.13 that it is the deceased who gave him M.O.8 series for polishing, which he had returned, there is no difficulty at all in accepting that the prosecution, by examining P.Ws.3 and 13, had established beyond doubt that M.O.8 series belonged to D1. Recovery of M.O.8 series was in a quick time from the commission of the crime and therefore there is every possibility of P.W.13 remembering the articles which were polished at the instance of D1, which he gave back to him. Simply because no records evidencing the business transaction carried on by P.W.13 had not been secured and produced before court, it is not possible to disbelieve the evidence of P.W.13 on the lines referred to above, since we find that his evidence had passed the test of reliability. But the evidence of P.W.12 coupled with Ex.P.9 and it's enclosures show that M.Os.1, 22 and 23, besides M.Os.3 and 5, were the pledged articles in his bank at the instance of Mohan Rao (D1) and Sheela (D2), which were redeemed on 27.10.2005. Therefore to that extent namely, M.Os.1, 3, 5, 22 and 23 were pledged by Deceased No.1 and Deceased No.2 with the bank, which they have redeemed, P.W.12's evidence deserves acceptance. We have already rejected the argument advanced by the learned senior counsel appearing for the defence on the absence of certificate at the foot of the enclosures to Ex.P.9 based on the Bankers' Books Evidence Act. There is no other material in the cross examination of P.W.12 to disbelieve the pledge transaction spoken to by him in his evidence in chief. There is no evidence before court that M.Os.69 to 72 shown to have been recovered, besides M.O.21 series at the instance of A3, were at any time handled by any of the deceased or it belonged to them as well. In other words, there is absolutely no evidence to connect M.Os.69 to 72 and M.O.21 series as the belongings of the deceased. It is likewise true that except for M.Os.1 to 8, there is no other evidence prima facie establishing the remaining incriminating objects recovered at the instance of the accused belonged to the family of the deceased. But one thing must be remembered – as rightly pointed out by the learned State Public Prosecutor – that there is none in the family of the deceased to give the description of all the articles shown to have been stolen after the crime was committed. P.W.1 is the brother of Mohan Rao. Admittedly, he is living separately. Therefore there is no scope for him to know the details of all the jewels available in the house of his brother. He can only speak about the jewels which he could have seen Sheela might have been wearing. P.W.2 is only a servant-maid while P.W.3 is a driver and therefore they also could not know about the jewels available in the family of the deceased. From the recovered objects at the

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instance of A1 and A2, atleast eight articles (M.Os.1 to 8) came to be identified as that of the family of the deceased. Therefore a duty is cast upon the accused to explain as to how they came into possession of not only those material objects but also such large volume of gold articles. Nearly 163 sovereigns of gold ornaments have come to be recovered, besides 32.170 kgs of silverwares. The quantity is so very huge that it is not possible to believe the police planting those ornaments in the hands of the accused to show recovery and it is against all common probabilities.

29. The resultant position of our discussion is as hereunder:

> "Though the evidence of P.W.4 shows that A1 to A3 entered the house of the deceased between 8.30 and 9.00 p.m on 09.11.2005, yet, since the State had failed to prove that any of the articles stated to have been recovered at the instance of A3 on his arrest belonged to the family of the deceased and finding that the entry of A3 in the house alone is not sufficient to hold him guilty of the offence, we acquit A3 of the offences for which he was charged, tried and convicted. Accordingly, the judgment under challenge, so far as it relates to A3 is concerned, is set aside and Crl.App.No.438/2007 is allowed. The fine amount, if any, paid by him is directed to be refunded to him. As far as the conviction of A1 and A2 is concerned, there is legal evidence to support the finding of guilt and accordingly, sustaining the finding of guilt rendered by the Court of Sessions, the judgment under challenge, so far as it relates to A1 and A2 is concerned, is confirmed. Accordingly, Crl.App.No.433/2007 filed by A1 and Crl.App.No.440/2007 filed by A2 are dismissed, subject to our answer in the Referred Trial".

30. Let us now address ourselves to the argument advanced by Mr.B.Sriramulu learned senior counsel that even in normal circumstances, this case cannot be treated as a rarest of the rare case warranting death punishment and since the entire case rests on circumstantial evidence, as a matter of principle, this court will not impose death sentence. For sustaining the above referred to argument, learned senior counsel highlighted the growing demand in the International arena for abolishing death penalty. Learned senior counsel brought to our notice a judgment of the Supreme Court in the case reported in 2006 (13) SCALE Pg.467 (Aloke Nath Dutta & Others Vs. State of West Bengal) where the Apex Court was considering the issue as to when death sentence would be justified. The Supreme Court in that judgment had held as hereunder:

> "We must remind ourselves that there has been a

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growing demand in the International arena that death penalty should be abolished (See Second Optional Protocol to the International Covenants on Civil and Political Rights and the Protocol to the American Constitution on Human Rights to abolish death penalty). Pursuant to or in furtherance of the pressure exhorted by various International NGOs, several countries have abolished death penalty. The superior courts of several countries have been considering the said demand keeping in view the International covenants, conventions and protocol."

"There are some precedents of this court e.g. Sahdeo and Others etc. Vs. State of U.P. (2004) 10 SCC 682 - para 9) and Sheikh Ishaqe and Others Vs. State of Bihar - (1995) 3 SCC 392), which are authorities for the proposition that if the offence is proved by circumstantial evidence ordinarily death penalty should not be awarded. We think, we should follow the said precedents instead and, thus, in place of awarding the death penalty, impose the sentence of rigorous imprisonment for life as against Aloke Nath. Furthermore we do not find any special reason for awarding death penalty which is imperative."

The next judgment relied upon by the learned senior counsel, is the one reported in AIR 2007 SC Pg.848 (Bishnu Prasad Sinha & Another Vs. State of Assam) wherein, in paragraph No.57, the Supreme Court had held as hereunder:

"The question which remains is as to what punishment should be awarded. Ordinarily, this court, having regard to the nature of the offence, would not have differed with the opinion of the learned Sessions Judge as also the High Court in this behalf, but it must be borne in mind that the appellants are convicted only on the basis of the circumstantial evidence. There are authorities for the proposition that if the evidence is proved by circumstantial evidence, ordinarily, death penalty would not be awarded. Moreover, the appellant No.1 showed his remorse and repentance even in his statement under section 313 of the Code of Criminal Procedure. He accepted his guilt."

By drawing our attention to a Division Bench judgment of this court reported in 2000-2-L.W. (Crl.) Pg.673 (Abdul Razak @ Razak & others Vs. State represented by Inspector of Police, Cheranpadi Police Station), to which one of us (RBJ) is a party, learned senior counsel highlighted that the court must have a great concern and solicitude before imposing death sentence. In that judgment, this

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court held as hereunder:

> "It is to be remembered that passing of sentence of death must elicit the greatest concern and solicitude of the Judge because this is one sentence which cannot be recalled."

31. Mr.V.Gopinath, learned senior counsel relied upon a judgment of the Supreme Court in the case reported in 2001 SCC (Crl.) Pg.1095 (Shri Bhagawan Vs. State of Rajasthan) to contend that on facts in that case five persons were murdered and even then the Supreme Court did not treat that case as a rarest of rare case. The case before us also rests only on circumstantial evidence. According to the prosecution, three persons entered the house; committed the offences as charged and then decamped with valuable articles. If there is direct evidence regarding the commission of the crime, then, this court would be in a position to find out the role played by the person who entered the crime scene. When direct evidence is not available, it is not possible for this court to visualize whether all the three persons, who entered the crime scene, equally participated in the commission of the crime or whether there was any difference in the role played by them. As noted earlier, if there is direct evidence, then the court would be in a position to judge the degree of punishment which may be the same for all the three or it may vary depending upon the role played. When there is absence of such evidence, then visiting each of the convicted person with the extreme penalty of death may not be warranted at all.

32. Having regard to the totality of the circumstances available and the case laws referred to us, while confirming the conviction of A1 and A2, we are inclined to modify the sentence of death into one of life imprisonment. The conviction and sentence of A1 and A2 for the other offences are maintained. The Referred Trial stands disposed of accordingly.

Vsl

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2.The District Collector, Salem
3.The Director General of Police, Chennai
4.The Public Prosecutor, High Court, Madras
5.The Superintendent, Central Prison, Coimbatore
6.The Assistant Commissioner of Police, Salem (South)
  Shevapet Police Station
7.The Station Officer, Crl Section, High Court, Madras.

+ 2 ccs to Mr. M. sathyanarayanan, Advocate SR No. 43912

+ 4 ccs to Mr. S. Ashok Kumar, Advocate SR No. 43591

R.T.NO.2 OF 2007 AND
CRL.APP.NOS.433, 438 &
440 OF 2007

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